No. 98-963

In the

Supreme Court of the United States

October Term, 1998

JEREMIAH W. (JAY) NIXON,
Attorney General of Missouri, et al.,
Petitioners,

v.

SHRINK MISSOURI GOVERNMENT PAC,
ZEV DAVID FREDMAN, and JOAN BRAY,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

BRIEF OF AMICI CURIAE PACIFIC LEGAL FOUNDATION AND LINCOLN CLUB OF ORANGE COUNTY IN SUPPORT OF RESPONDENTS

JOHN A. RAMIREZ
Of Counsel
Pacific Legal Foundation
10360 Old Placerville Road,
Suite 100
Sacramento, California 95827
Telephone: (916) 362-2833
Facsimile: (916) 362-2932

SHARON L. BROWNE
Counsel of Record
Pacific Legal Foundation
10360 Old Placerville Road,
Suite 100
Sacramento, California 95827
Telephone: (916) 362-2833
Facsimile: (916) 362-2932

Counsel for Amici Curiae Pacific Legal Foundation and Lincoln Club of Orange County

QUESTION PRESENTED

Whether the court of appeals erred in declaring that Missouri's campaign contribution limits for statewide office, which exceed the limits expressly approved by this Court for national elections in *Buckley v. Valeo*, 424 U.S. 1 (1976), violate the First Amendment?

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INTEREST OF AMICI[1]

For 25 years Pacific Legal Foundation attorneys have been litigating in support of individual rights. To this end, Pacific Legal Foundation attorneys have been before this Court for the purpose of representing individuals whose First Amendment rights had been violated. *See Keller v. State Bar*, 496 U.S. 1 (1990). Pacific Legal Foundation has also participated as a friend of the court in many other First Amendment cases this Court has heard in the past decade. *See Arkansas Educational Television Commission v. Forbes*, 118 S. Ct. 1633 (1998); *Glickman v. Wileman Brothers & Elliott, Inc.*, 521 U.S. 457 (1996); *Rosenberger v. Rector and Visitors of University of Virginia*, 515 U.S. 819 (1995); and *U.S. Term Limits v. Thornton*, 514 U.S. 779 (1995).

The Lincoln Club of Orange County is a community-based membership organization with a political action committee (Club), formed for the purpose of making contributions to California state and local candidates. Currently, the Club has over 300 individual members. Because many California municipalities and, at various times, California law, have imposed contribution limits which thereby infringe upon the associational rights of the Club and its members, the Club has a direct interest in the law governing contribution limits.

Pursuant to Supreme Court Rule 37, written permission from all parties for Pacific Legal Foundation to file this brief has been lodged with the Clerk of this Court.

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[1] Pursuant to Supreme Court Rule 37.6, amici curiae Pacific Legal Foundation and the Lincoln Club of Orange County affirm that no counsel for any party in this case authored this brief in whole or in part; and furthermore, that no person or entity has made a monetary contribution specifically for the preparation or submission of this brief.

STATEMENT OF THE CASE

Zev David Fredman was a candidate for the office of Missouri state auditor in the 1998 Republican primary. To this end, he formed a candidate committee ("Fredman for Auditor"), filed the requisite candidate papers, and paid a filing fee.

As part of his initial campaign strategy, Fredman desired to raise large sums of funds from various donors and possibly from Republican Party leaders. The purpose of Fredman's strategy was to obtain seed money in order to allow him to compete effectively in the Republican primary. His ability to attract other contributions--and thereby become a competitive candidate--was a function of his ability to raise early seed money. This was particularly important for Fredman because he was not a professional politician. As a first-time candidate for statewide political office, he did not have either a vast network of political contacts or a well-established base of contributors. As a private businessman who had to continue to manage his business while mounting a statewide campaign, Fredman did not have the time or resources to raise the seed money necessary for his campaign by asking a large number of contributors for small contributions. Instead, Fredman needed to depend on a small number of large contributions.

Missouri law prohibited Fredman from raising more than $1,075 per donor for the primary election. Mo. Ann. Stat. section 130.032(1)(6). Missouri law further provided that contributors and candidates who violated Missouri's contribution limits would be subject to criminal sanctions. Mo. Ann. Stat. section 130.081.

Shrink Missouri Government (SMG) PAC is a political action committee, duly organized under the laws of Missouri. During the 1994, 1996, and 1998 election cycles, it made contributions to candidates for Missouri elective office, and

continues in operation for the purpose of making similar contributions in the future. Because SMG believed that Fredman's candidacy for state auditor promoted the political viewpoints and goals of the PAC and its contributors, SMG contributed $1,025 to the "Fredman for Auditor" committee on June 23, 1997, and an additional $50 on February 25, 1998. By this latter date, SMG had therefore provided the maximum contribution to the "Fredman for Auditor" campaign for the primary election. SMG would have contributed more than $1,075 to the "Fredman for Auditor" committee for the primary election, but was prohibited from doing so by Missouri law.

Because Missouri's contribution limits severely burdened SMG's ability to promote its political viewpoints and to express support for candidates through campaign contributions, and because Missouri's contribution limits precluded the ability of Fredman to raise early seed money and thereby prevented him from mounting a competitive campaign, SMG and Fredman filed an action under 42 U.S.C. section 1983 in the United States District Court for the Eastern District of Missouri. SMG and Fredman sought declaratory and injunctive relief against the provisions of Missouri's campaign laws that limited contributions to candidates for office. On May 12, 1998, the Honorable Catherine D. Perry, United States District Judge, entered a final judgment holding that the contribution limits did not violate the First Amendment. SMG and Fredman appealed this judgment to the Eighth Circuit Court of Appeals. On November 30, 1998, the United States Court of Appeals for the Eighth Circuit found that Missouri's contribution limits violated the First Amendment of the United States Constitution. *Shrink Missouri Government PAC v. Adams*, 161 F.3d 519 (8th Cir. 1998).

SUMMARY OF ARGUMENT

In the seminal case of *Buckley v. Valeo*, 424 U.S. 1 (1976), this Court explained that "contribution and expenditure limitations operate in an area of the *most fundamental* First Amendment activities." *Id.* at 14 (emphasis added). Stating that

both expenditure and contribution restrictions implicate political speech and association, this Court in *Buckley* further noted that "contribution and expenditure limitations impose direct quantity restrictions on political communication and association by persons, groups, candidates, and political parties." *Id.* at 18.

This Court's established First Amendment jurisprudence makes clear that state election laws which "directly regulate[] core political speech" or which "impose[] 'severe burdens'" on speech or association are always subject to strict scrutiny. *Buckley v. American Constitutional Law Foundation*, 119 S. Ct. 636, 642 n.12, 648 (1999) (Thomas, J., concurring in the judgment). As this Court has held that contribution limits restrict "fundamental" First Amendment activities (*Buckley*, 424 U.S. at 14), the court below properly applied strict scrutiny with respect to Missouri's campaign contribution limits.

The state's contention that substantial "deference" should be given to legislatively imposed contribution limits is, in reality, a *subterfuge* utilized to mask the flawed premise underlying campaign contribution limits. The flawed premise is that rather than serving as *limitation* on legislative power, the First Amendment--according to campaign contribution limit proponents--embodies a *normative policy end* towards which society should strive. This normative policy end is a "level playing field" where all citizens have a *government compelled* "equal opportunity" for self-expression.

Not only has this Court *categorically rejected* the notion that the exercise of free speech by some may be limited for the purpose of amplifying the speech of others, but also, the state's argument fails to recognize the potential--in the context of campaign finance reform--for "legislators to set the rules of the electoral game so as to keep themselves in power and keep potential challengers out of it." *Colorado Republican Federal*

Campaign Committee v. Federal Election Commission, 116 S. Ct. 2309, 2329 n.9 (1996) (Thomas, J., concurring in part and dissenting in part).

Moreover, in order to survive strict scrutiny, a statute regulating fundamental rights must be narrowly tailored to serve a compelling governmental interest. In the context of campaign finance, the only governmental interest that this Court has accepted as "compelling" is the prevention of actual and apparent corruption. *Federal Election Commission v. National Conservative Political Action Committee*, 470 U.S. 480, 496-97 (1985). This Court has defined corruption narrowly, to include *only a financial quid pro quo. Id.* at 497.

To this end, nearly a quarter century has passed since this Court decided *Buckley* and much has changed since that time with respect to the regulation of election-related activities. More specifically, the rigorous enforcement of bribery statutes and the adoption and enforcement of comprehensive disclosure schemes by all 50 states--coupled with the intense scrutiny by the press with respect to the financing of elections--illustrates that the "blunderbuss approach" of contribution limits "cannot be held a means narrowly and precisely directed to the governmental interest in the small minority of contributions that are not innocent." *Colorado Republican*, 116 S. Ct. at 2329 (Thomas, J., concurring in part and dissenting in part). Experiences from Missouri, California, and other jurisdictions indicate that less restrictive means are available to prevent actual and apparent corruption.

ARGUMENT

I

THE COURT BELOW APPLIED THE PROPER STANDARD OF REVIEW

A. This Court Has Made Clear That the "Now-Settled Approach" with Respect to State Regulations Imposing Severe Burdens on Speech Is That Such Regulations Must Be Narrowly Tailored to Serve a Compelling State Interest

In the seminal case of *Buckley v. Valeo*, 424 U.S. 1, this Court explained:

> Contribution and expenditure limitations operate in an area of the *most fundamental First Amendment activities*. Discussion of public issues and debate on the qualifications of candidates are integral to the operation of the system of government established by our Constitution. *The First Amendment affords the broadest protection to such political expression* in order "to assure [the] unfettered interchange of ideas for the bringing about of political and social changes desired by the people."

Id. at 14 (citation omitted, emphasis added). The *Buckley* Court made clear that both expenditure *and contribution restrictions* implicate political speech and association, stating that

> contribution and expenditure limitations impose direct quantity restrictions on political communication and association by persons, groups, candidates, and political parties.

Id. at 18.

Notwithstanding this Court's recognition that *both* expenditure *and contribution limits* implicate "fundamental First Amendment activities" (*id.* at 14), it has not gone "unnoticed"

that this Court has seemed more "forgiving" in the level of scrutiny applied in its review of contribution limits. *Colorado Republican*, 116 S. Ct. at 2329 n.7; *See also California Medical Association v. Federal Election Commission*, 453 U.S. 182, 196 (1981) (contributions are "not the sort of political advocacy that this Court in *Buckley* found entitled to full First Amendment protection"); *National Conservative Political Action Committee*, 470 U.S. at 501; *Vannatta v. Keisling*, 151 F.3d 1215, 1221 (9th Cir. 1998) (applying a "rigorous" level of scrutiny with respect to contribution limitations).

In contrast, this Court has clearly and unequivocally applied strict scrutiny to expenditure limits, finding that such limits are subject to nearly a per se rule of unconstitutionality as there exists no compelling governmental reason to impose direct limitations on such political speech. *See Buckley*, 424 U.S. at 44-59; *Colorado Republican*, 116 S. Ct. at 2312 (opinion of Breyer, J.);. *National Conservative Political Action Committee*, 470 U.S. at 496-97; *Citizens Against Rent Control v. Berkeley*, 454 U.S. 290, 297-98 (1981).

This perceived distinction between the level of deference provided to campaign contributions as opposed to campaign expenditures has its roots in this Court's statement in *Buckley* that contribution limits "entail[] only a marginal restriction upon the contributor's ability to engage in free communication" because "the transformation of contributions into political debate involves speech by someone other than the contributor." *Buckley*, 424 U.S. at 20-21. In contrast, expenditure limits, the *Buckley* Court stated, "represent substantial rather than merely theoretical restraints on the quantity and diversity of political speech." *Id.* at 19.

It was this distinction this Court utilized in *California Medical Association* to uphold the Federal Election Campaign Act (FECA) contribution limits on the amount a trade association was permitted to give to a multicandidate political action committee. In so holding, the *California Medical Asso-*

ciation Court noted that contributions to a political committee constituted "speech by proxy" and therefore limits on such activity were subject to less intense judicial scrutiny. *California Medical Association*, 453 U.S. at 196.

Although Amici do not intend to simply dismiss this apparent distinction as set forth above, Amici respectfully submit that subjecting campaign contribution limits to anything other than "strict scrutiny" defies logic and directly contravenes this Court's First Amendment jurisprudence.

1. Political Contributions and Expenditures Are Indistinguishable

The distinction between expenditure and contribution limits has "no constitutional significance." *National Conservative Political Action Committee*, 470 U.S. at 518 (Marshall, J., dissenting). "[P]eople--candidates and contributors--spend money on political activity because they wish to communicate ideas, and their constitutional interest in doing so is precisely the same whether they or someone else utter the words." *Buckley*, 424 U.S. at 244 (Burger, C.J., concurring in part and dissenting in part). Moreover, contributions to a political campaign is exactly the type of "group association" this Court has long-recognized as being accorded the most "exacting" protection by the First Amendment. *NAACP v. Alabama*, 357 U.S. 449, 460 (1958); *Citizens Against Rent Control*, 454 U.S. at 294. The ability to freely communicate ideas and participate in group association by making campaign contributions is central to our form of representative democracy. *See, e.g., Roberts v. United States Jaycees*, 468 U.S. 609, 622 (1984) ("[W]e have long understood as implicit in the right to engage in activities protected by the First Amendment a corresponding right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends."). The exercise of such free speech rights allows citizens to communicate a message of support directly to their candidate and at the same time allows the candidate and his or her backers

to further garnish electoral support. *See* Lillian BeVier, *Money and Politics: A Perspective on the First Amendment and Campaign Finance Reform*, 73 Cal. L. Rev. 1045, 1054 (1985). Indeed, as this Court has noted:

> [T]he practice of persons sharing common views banding together to achieve a common end is deeply embedded in the American political process. The 18th-century Committees of Correspondence and the pamphleteers were early examples of this phenomena and the Federalist Papers were perhaps the most significant and lasting example. The tradition of volunteer committees for collective action has manifested itself in myriad community and public activities; *in the political process it can focus on a candidate* or on a ballot measure. Its value is that by collective effort individuals can make their views known, when, individually, their voices would be faint or lost.

Citizens Against Rent Control, 454 U.S. at 294 (emphasis added); see also *United States Jaycees*, 468 U.S. at 622 ("An individual's freedom to . . . petition the government for the redress of grievances could not be vigorously protected from interference from the State unless a correlative freedom to engage in group effort toward those ends were not also guaranteed.").

It is perhaps with these thoughts in mind that three members of the *Buckley* Court found the distinction between contributions and expenditures untenable at the time (*see Buckley*, 424 U.S. at 241, 244 (Burger, C.J., concurring in part and dissenting in part) ("The Court's attempt to distinguish the communication inherent in political contributions from the speech aspects of political expenditures simply 'will not wash.'"); *id.* at 261 (White, J., concurring in part and dissenting in part) ("[I]t is difficult to see the difference between the two situations."); *id.* at 290 (Blackmun, J., concurring in part and dissenting in part) ("I am not persuaded that the Court makes . . . a principled

distinction between contribution limitations, on the one hand, and the expenditure limitations on the other . . . ."), and two other members have subsequently disavowed it. *See National Conservative Political Action Committee*, 470 U.S. at 518-19 (Marshall, J., dissenting) ("I now believe the distinction has no constitutional significance."); *Colorado Republican*, 116 S. Ct. at 2325 and n.4 (Thomas, J., concurring in part and dissenting in part) ("In my view, the distinction [between contributions and expenditures] lacks constitutional significance, and I would not adhere to it.").

Amici therefore find it compelling that in the course of the 23 years since this Court decided *Buckley* substantial precedent has evolved supporting the conclusion that "contributions and expenditures are two sides of the same First Amendment coin." 424 U.S. at 241 (Burger, C.J., concurring in part and dissenting in part)[2]. *Amici therefore submit that contribution limits of the*

[2] As a practical matter, the reason contribution and expenditure limits involve "two sides of the same First Amendment coin" (*id.*) is because both campaign contributions and expenditures are utilized for the *exact same purpose*; namely, conveying a political message in the "marketplace" of "ideas." *Citizens Against Rent Control*, 454 U.S. at 295. This is illustrated by reference to a recent example from a statewide campaign in California--which currently does *not* impose contribution limits on state candidates. The 1998 Democratic gubernatorial primary pitted Al Checchi, a multimillionaire businessman whose personal campaign expenditures could not have been constitutionally limited, against Gray Davis, a candidate without such resources. *See Justices May Revive Cap on Contributions*, L.A. Times, Dec. 9, 1998. As the attached California campaign disclosure forms illustrate (*see* Appendix B), funds raised by both the Checchi and Davis committees (whether in the form of personal expenditures by Checchi or contributions from supporters received by Davis) are used *for the exact same purpose*; paying political professionals and other vendors to disseminate the political committees' message. Moreover, had California law imposed campaign contribution limits on statewide candidates such as Davis at that time, that would have

(continued...)

type at issue in this case should undoubtedly be subject to strict scrutiny.

2. Subjecting Contribution Limits to Anything Other Than Strict Scrutiny Would Directly Contravene This Court's Established First Amendment Jurisprudence

This Court has long recognized that state election laws "directly regulat[ing] core political speech" or which "impose 'severe burdens'" on speech or association are always subject to strict scrutiny. *Buckley v. American Constitutional Law Foundation, Inc.*, 119 S. Ct. at 649 (Thomas, J., concurring in judgment).

For example, just recently in *American Constitutional Law Foundation* this Court applied strict scrutiny in reviewing certain Colorado statutes regulating the initiative and referendum process. *American Constitutional Law Foundation*, 119 S. Ct. at 642 n.12. Other precedents from this Court where strict scrutiny has been applied with respect to state laws which regulate core political speech or impose severe burdens on such speech are abundant. *See Burson v. Freeman*, 504 U.S. 191,

[2](...continued)
undoubtedly vitiated the associational rights of Davis backers. Their collective voice would have been subject to a limit (as Davis could have only raised funds in small incremental amounts), whereas the collective voice of Checchi's supporters would have been comparatively amplified as he could spend *unlimited amounts of his own money in furtherance of his candidacy*. *See Citizens Against Rent Control*, 454 U.S. at 296 ("To place a . . . limit . . . on individuals wishing to band together to advance their views . . . is clearly a restraint on the right of association."); *See also National Conservative Political Action Committee*, 470 U.S. at 495 ("To say that [collective action by] pooling . . . resources . . . is not entitled to full First Amendment protection would subordinate the voices of those of modest means as opposed to those sufficiently wealthy to be able to buy expensive media ads with their own resources.").

198 (1992) (applying strict scrutiny in determining whether to uphold a state law prohibiting the solicitation of voters and the distribution of campaign literature within 100 feet of the entrance of a polling place); *Brown v. Hartlage*, 456 U.S. 45, 53-54 (1982) (strict scrutiny applied to state regulations of candidate promises); *First National Bank of Boston v. Bellotti*, 435 U.S. 765, 786 (1978) (strict scrutiny applied to a state law prohibiting corporate contributions to ballot measures); *Citizens Against Rent Control*. 454 U.S. at 294 (applying strict scrutiny to a municipal ordinance limiting contributions to ballot measure committees); *McIntyre v. Ohio Elections Commission*, 514 U.S. 334, 345 (1995) (applying strict scrutiny to a state statute preventing anonymous campaign literature). Indeed, even where a state law does not directly regulate core political speech, this Court has applied strict scrutiny. *See Meyer v. Grant*, 486 U.S. 414, 421 (1988) (applying strict scrutiny to a state statute making it a felony to pay initiative petition circulators).

As this Court has previously noted, campaign contribution limits operate in "an area of the most fundamental First Amendment activities" (*Buckley*, 424 U.S. at 14) as they "impose direct quantity restrictions on political communication and association by persons, groups, candidates, and political parties." *Id.* at 18. Consequently, regulations imposing expenditure or contribution limits have *always been subject to strict scrutiny*--notwithstanding the wordsmithing and machinations present in certain passages in *California Medical Association*. Indeed, as this Court recently noted:

> In these cases [citing *Buckley*, *Federal Election Commission v. Massachusetts Citizens for Life*, 479 U.S. 238 (1986), *National Conservative Political Action Committee*, and *California Medical Association*], the Court essentially weighed the First Amendment interest in permitting candidates (*and their supporters*) to spend money to advance their political views, against a "*compelling*" governmental interest in assuring the

> electoral system's legitimacy, protecting it from the appearance and reality of corruption.

Colorado Republican, 116 S. Ct. at 2313 (emphasis added). Thus, since *Buckley*, this Court has always required that contribution limits be subject to "exacting judicial review" (*Citizens Against Rent Control*, 454 U.S. at 294) and such "exacting" review has always been *equated with strict scrutiny*. *McIntyre*, 514 U.S. at 346 n.10. It therefore appears clear that the "now-settled approach" with respect to "state regulations 'imposing "severe burdens" on speech'" is that such regulations must "be narrowly tailored to serve a compelling state interest." *American Constitutional Law Foundation*, 119 S. Ct. at 642 n.12; *see also id.* at 649 (Thomas, J., concurring in the judgment) ("When a State's rule imposes severe burdens on speech or association, it must be narrowly tailored to serve a compelling interest; lesser burdens trigger less exacting review . . . .").

Therefore, as this Court has previously held that contribution limits restrict "fundamental" First Amendment activities (*Buckley*, 424 U.S. at 14), and that state regulations imposing such contribution limits are subject to "exacting judicial review" (*Citizens Against Rent Control*, 454 U.S. at 294), the court below properly applied strict scrutiny with respect to Missouri's campaign contribution limits.

B. The Purpose of Applying Strict Scrutiny Is Not to Truncate Legislative Prerogatives but Rather to "Jealously Guard" Against Usurpations of Fundamental Rights

Contrary to the assertions of the state and its amici, the opinion of the court below does not abrogate the ability of state legislatures to regulate state electoral activity. To the contrary, the purpose of applying strict scrutiny is not to truncate legislative prerogatives, but, rather, to jealously guard against

usurpations of fundamental rights. Indeed, as this Court well knows:

> In the usual case . . . [t]o survive judicial scrutiny a statutory enactment need only have a reasonable relationship to the promotion of an objective which the Constitution does not independently forbid, *unless the legislation trenches on fundamental constitutional rights*.
>
> But *where the challenged legislation implicates fundamental constitutional guarantees*, a far more demanding scrutiny is required. For example . . . the presumption of constitutionality is lessened when the Court reviews legislation endangering fundamental constitutional rights, *such as freedom of speech* . . . . Legislation touching substantially on these areas comes [before a court] bearing a heavy burden *which its proponents must carry*.

Nixon v. Administrator of General Services, 433 U.S. 425, 506 (1977) (Burger, C.J., dissenting) (emphasis added). Accordingly, "because of the significant impact on First Amendment rights" (*id.* at 532) and perhaps with the above thoughts in mind, this Court has always required state election laws regulating political speech to undergo "exacting" or "strict scrutiny." *Id.*; *see also Citizens Against Rent Control*, 454 U.S. at 294.

Petitioners' contention--that substantial "deference" should be given to legislatively imposed contribution limits--is, in reality, a *subterfuge* utilized to mask the flawed premise underlying campaign contribution limits such as those at issue here. The flawed premise is that rather than serving as a *limitation* on legislative power, the First Amendment--according to campaign contribution limit proponents-- embodies a *normative policy end* towards which society should strive. This normative policy end is a "level playing field" where all citizens have a

government compelled "equal" opportunity for self-expression. This normative policy end underlying contribution limits of the type at issue here is fatally flawed for two reasons.

First, this Court has *categorically rejected* the notion that the exercise of free speech by some may be limited for the purpose of amplifying the speech of others:

> [T]he concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is *wholly foreign to the First Amendment*, which was designed "to secure the 'widest possible dissemination of information from diverse and antagonistic sources,'" and "to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people." *The First Amendment's protection against governmental abridgment of free expression cannot properly be made to depend on a person's financial ability to engage in public discussion.*

Citizens Against Rent Control, 454 U.S. at 295-96 (citations omitted; emphasis added).

Second, and perhaps more fundamental, the normative policy end that underlies contribution limits such as those at issue here is, in reality, a repackaged version of an argument this Court has rebuked in the past. More specifically, in *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241 (1974), this Court declared unconstitutional a Florida statute that provided a "right of reply" for political candidates with respect to newspapers which had attacked or otherwise editorialized in opposition to them. Defending the statute with an argument remarkably similar to the one advanced by the government and its amici in this case--that political campaign giving and by extension the election of representatives is dominated and controlled by well-endowed "special interests"--the state of Florida argued that the reply statute was necessary as "[t]he First

Amendment interest of the public being informed [was] in peril because the 'marketplace of ideas' [was] a monopoly controlled by the owners of the market." *Id.* at 251. According to the State of Florida, the First Amendment imposed a "fiduciary obligation" *on the government* "to ensure that a wide variety of views reach the public." *Id.* at 251, 248.

Rejecting this contention, this Court stated:

> [T]here is practically universal agreement that a major purpose of [the First Amendment] [is] to protect the free discussion of governmental affairs.
>
> . . . .
>
> . . . [S]ociety must take the risk that occasionally debate on vital matters will not be comprehensive and that all viewpoints may not be expressed.

Id. at 259-60 (White, J., concurring in judgment).

Columbia Broadcasting System v. Democratic National Committee, 412 U.S. 94 (1973), offers further support to reject the "level playing field argument" advanced by the government and its amici. In that case, this Court held that there was no First Amendment requirement for broadcasters to sell time for editorial announcements. *Id.* at 130-32. Thus, this Court rejected attempts by the plaintiffs in that case to turn the First Amendment into a "sword" rather than a shield against government overreaching. *See also Arkansas Educational Television Commission v. Forbes*, 118 S. Ct. 1633 (1998) (rejecting third-party candidate's argument that the First Amendment gave him a right of access to participate in a candidate debate hosted by a state-owned public television broadcaster).

Far from imposing a duty on government to "level the playing field," the First Amendment serves as a *limitation* on legislative power. Standing alone, the First Amendment provides:

> Congress shall make *no law* . . . abridging the freedom of speech . . . or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Const., amend. 1 (emphasis added). This limitation on legislative power is, of course, made applicable to the states through the Fourteenth Amendment. *See, e.g., Hague v. Committee for Industrial Organization*, 307 U.S. 496 (1939); *see also McIntyre*, 514 U.S. at 336 n.1.

But even assuming arguendo, that, as the government and its amici contend, the First Amendment can be used to "level the playing field" (*see, e.g., Red Lion Broadcasting Co. v. Federal Communications Commission*, 395 U.S. 367, 375 (1969) (upholding the then-existing Federal Communication Commission's "fairness doctrine" on the ground the policy "enhanced" rather than abridged First Amendment principles),[3] this argument "fails to acknowledge . . . the potential for legislators to set the rules of the electoral game so as to keep

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[3] It is to be noted, however, that *Red Lion* relied, in part, on the finding that the ability of citizens to broadcast viewpoints was curtailed to the extent that effectively doing so relied on their obtaining access to scarce broadcast mediums such as television and radio frequencies. Amici respectfully submit that the rationale of *Red Lion* may no longer be viable to the extent that broadcast mediums are no longer scarce in this "internet" or "world wide web" age. More specifically, the development of the internet and the world wide web provide most citizens with virtually unfettered low-cost access to a means of broadcasting viewpoints. *See Reno v. American Civil Liberties Union*, 117 S. Ct. 2329, 2335 and n.9 (1997) ("Any person or organization with a computer connected to the Internet can 'publish' information. Publishers include . . . advocacy groups and individuals. . . . 'Web publishing is simple enough that thousands of individual users and small community organizations are using the Web to publish their own personal "home pages," the equivalent of individualized newsletters about the person or organization, which are available to everyone on the Web.'").

themselves in power and keep potential challengers out of it." *Colorado Republican*, 116 S. Ct. at 239 and n.9 (Thomas, J., concurring in part and dissenting in part). "Indeed, history demonstrates that the most significant effect of election reform has been not to purify public service, but to protect incumbents and increase the influence of special interest groups." *Id.* Therefore, when state legislatures--such as the Missouri Legislature--seek to "*ration* political expression in the electoral process, [courts] ought not simply acquiesce in [legislatures'] judgment." *Id.* (emphasis added).

As Professor BeVier points outs:

> Courts must police inhibitions on political activity because we cannot trust elected officials to do so: ins have a way of wanting to make sure the outs stay out . . . .
>
> Indeed, there are reasons to believe that legislators, given free rein to inhibit political activity, might attempt to restructure the political balance of power so as principally to benefit themselves and their political allies. In fact, many political process "reforms" seem to promise tempting short-run political advantages to incumbents and their allies.

BeVier, *Money and Politics: A Perspective on the First Amendment and Campaign Finance Reform*, *supra*, at 1075-76.

Moreover, evidence bears this point out as the advantages of holding office (such as franking privileges, media attention, etc.) certainly provide incumbent candidates with a multitude of vehicles by which to increase and maintain their name recognition and, by extension, their hold on their seats. Indeed, as one *Los Angeles Times* article pointed out for example, between January 1, 1995, through Aug. 19, 1996, the top spending 20 California Assembly Members alone spent a combined total of $1.3 million during this period on *taxpayer funded* frank mail. *See* Paul Jacobs and Virginia Ellis, *Legislators Bypass Mass*

Mailing Ban: Loopholes Used to Send 35 Million Pieces at Taxpayer Expense, L.A. Times, Aug. 27, 1996, at A1; *see also Florida Bar v. Went for It, Inc.*, 515 U.S. 618, 628 (1995) (stating that references to other locales is relevant in First Amendment challenges). As this article points out, this staggering amount of taxpayer funded mail sent to California voters during this period:

> . . . [D]emonstrates the inventiveness of elected officials in finding ways to use tax funds to promote themselves and maintain their grip on public office. . . .
>
> . . . [T]he mailings are used most by legislators facing a stiff challenge in their district or trying to advance to another office. . . .
>
> And direct mail to voters plays a crucial role in winning elections . . . . "Nine times out of 10, campaigns are won by the candidate who did the most mail."

L. A. Times, Aug. 27, 1996.

In yet another California example, one Assembly incumbent sent out $24,000 worth of taxpayer funded mail two weeks prior to a recall election this Member faced. *See A Behind-the-Scenes Look at Orange County's Political Life: Foes Frankly Furious at Allen's Late Mailers at Taxpayers' Expense*, L.A. Times, Nov. 5, 1995.

Yet more recent evidence also underscores the fact that the ability of challengers to unseat incumbent officeholders is directly related to the amount of money they are able to raise and spend. One such study concluded as follows:

> In fourteen lower-chamber legislative elections in states between 1990 and 1994, as well as in six U.S. Congressional elections between 1986 and 1996, the amount of money raised by the challenger was

> *consistently the single most important variable associated with electoral competition.*

Michael Malbin and Thomas Gais, *The Day After Reform: Sobering Campaign Finance Lessons from the American States*, at 166 (The Rockefeller Institute Press 1998). Professor Malbin's study also concluded:

> Our studies of twenty-two legislative elections confirm a conclusion long known among political scientists: The most important financial difference between competitive and uncompetitive races lies in the money raised by the challenger. There is also no question, either among political scientists or among politicians, that early money is the hardest to raise, as well as being the most important for establishing a "take-off" threshold for potentially viable campaigns to become serious.
>
> . . . [W]e know that the sources available to incumbents, and to well-established, competitive nonincumbents, will not be there to help most challengers get started.
>
> Rich candidates, of course, can always provide their own seed money.

Id. at 174.

Indeed, Professor Malbin's findings indicate that if the old adage that "money [is] the mother's milk of politics" is in fact true, courts should be vigilant in ensuring that incumbent officeholders do not "own[] the dairy." *Fair Political Practices Commission v. Superior Court*, 25 Cal. 3d 33, 54 (1979) (Bird, C.J., dissenting) (striking down California Political Reform Act's ban on lobbyist contributions). *This case, of course, involves a nonincumbent first-time candidate for statewide political office.*

Accordingly, the court below properly rejected the "scintilla" of evidence produced by Missouri in defense of that state's campaign contribution scheme: namely, the "conclusory and self-serving" affidavit of an incumbent state Senator. *Shrink Missouri Government PAC v. Adams*, 161 F.3d at 522. This evidence alone simply does not satisfy the "heavy burden" (*Nixon v. Administrator of General Services*, 433 U.S. at 506) the government and its amici carry to demonstrate to a court that the recited harms of corruption or the appearance of corruption "are real . . . and that regulation [contribution limits] will in fact alleviate these harms in a direct and material way." *Turner Broadcasting System, Inc. v. Federal Communication Commission*, 512 U.S. 622, 664 (1994).

II

MORE NARROWLY TAILORED MEANS EXIST TO PREVENT ACTUAL AND APPARENT CORRUPTION

In order to survive strict scrutiny, a statute regulating fundamental rights must be "narrowly tailored" to serve a compelling governmental interest. *American Constitutional Law Foundation*, 119 S. Ct. at 642 n.12; *McIntyre*, 514 U.S. at 347. To this end, "government must curtail speech *only to the degree necessary to meet the particular problem at hand, and must avoid infringing on speech that does not pose the danger that has prompted the regulation.*" *Massachusetts Citizens for Life*, 479 U.S. at 265 (emphasis added).

In the context of campaign finance, the only governmental interest that this Court has accepted as "compelling" is the prevention of actual or apparent corruption. *National Conservative Political Action Committee*, 470 U.S. at 496-97. Moreover, this Court has defined corruption narrowly, to include *only* a financial quid pro quo; in other words, dollars *exchanged* for political favors. *National Conservative Political Action Committee*, 470 U.S. at 497; *see by analogy, McCormick v.*

United States, 500 U.S. 257, 273 (1991) (finding campaign contributions made in exchange for an "*explicit promise*" of favorable future action as a violation of the Hobbs Act as opposed to those contributions made with *anticipation* of favorable future action) (emphasis added).[4]

Nearly a quarter century has passed since this Court decided *Buckley* and much has changed since that time with respect to the regulation of election-related activities. More specifically,

[4] In fact, the major foundation on which the government and its amici base their argument is what they characterize as the "common sense recognition" that large campaign contributions cause "harm" or "corrupt" our system of government. This Court has rejected similar attempts to make such bald, categorical assessments of corruption based solely on the existence of campaign contributions in our electoral system *without evidence of actual quid pro quo corruption*:

> Serving constituents and supporting legislation that will benefit the district and individuals and groups therein is the everyday business of a legislator. It is also true that campaigns must be run and financed. Money is constantly being solicited on behalf of candidates, who run on platforms and who claim support on the basis of their views and what they intend to do or have done. Whatever ethical considerations and appearances may indicate, to hold that legislators commit . . . [crimes] when they act for the benefit of constituents or support legislation furthering the interests of some of their constituents, shortly before or after campaign contributions are solicited and received from those beneficiaries, is an unrealistic assessment of [the indicia of criminal intent]. . . . To hold otherwise would open to prosecution not only conduct that has long been thought to be well within the law but also conduct that in a very real sense is unavoidable so long as election campaigns are financed by private contributions or expenditures, as they have been from the beginning of the Nation.

McCormick, 500 U.S. at 272. Thus, the government's assertion that the mere existence of "large" campaign contributions in our electoral system is indicative of corruption is simply unsupportable.

the rigorous enforcement of bribery statutes and the adoption and enforcement of comprehensive disclosure schemes by all 50 states--coupled with the intense scrutiny by the press with respect to the financing of elections--illustrates that the "blunderbuss approach" of contribution limits "cannot be held a means narrowly and precisely directed to the governmental interest in the small minority of contributions that are not innocent." *Colorado Republican*, 116 S. Ct. at 2329 (Thomas, J., concurring in part and dissenting in part).

Simply stated, and as discussed more fully below, more narrowly tailored means exist to prevent actual and apparent corruption.

A. Bribery Statutes Exist and Are Utilized to Prevent Actual Corruption

Missouri has enacted a comprehensive scheme of criminal bribery statutes intended to precisely address the situation of "quid pro quo" corruption. More specifically, Missouri Code section 576.010 provides in relevant part:

> 1. A person commits the crime of bribery of a public servant if he knowingly offers, confers or agrees to confer upon any public servant any benefit, direct or indirect, in return for:
>
> (1) The recipient's official vote, opinion, recommendation, judgment, decision, action or exercise of discretion as a public servant; or
>
> (2) The recipient's violation of a known legal duty as a public servant.

In addition, Missouri Code section 576.020 provides in relevant part:

> 1. A public servant commits the crime of acceding to corruption if he knowingly solicits, accepts, or agrees to accept any benefit, direct or indirect, in return for:

(1) His official vote, opinion, recommendation, judgment, decision, action or exercise of discretion as a public servant; or

(2) His violation of a known legal duty as a public servant.

Additionally, as part of the requisite oath of office for elected members of the Legislature, the Missouri Constitution requires such members to take an oath committing to honest services during their tenure and the commitment not to take any money or other gifts in exchange for the performance or nonperformance of official duties. Missouri Constitution, Article III, section 15. Far from being a relic of Missouri law, the annotations to these statutory and constitutional provisions indicate their vitality.

As these Missouri bribery laws are undoubtedly more narrowly tailored means by which to address the precise problem of corruption in public service, the contribution limits at issue in this case are overbroad as they "infringe[] on [many instances of innocent] speech that does not pose the danger that has prompted regulation." *Massachusetts Citizens for Life*, 479 U.S. at 265.

In addition, recent experiences in California also illustrate the ability of bribery laws "to punish and deter the corrupt conduct the [g]overnment seeks to prevent" through limits on campaign contributions. *Colorado Republican*, 116 S. Ct. at 2329 (Thomas, J., concurring in part and dissenting in part). In the early 1980's, the United States Department of Justice began what was to be an approximate eight-year investigation into suspected corruption in the California Legislature. As explained in the *Sacramento Bee* (*It Wasn't Easy to Sting Capitol*, June 19, 1994), this investigation resulted in the convictions of four state legislators, several appointed officials and one lobbyist. Generally, these convictions were based on various federal and state statutes and legal theories such as the

Hobbs Act (19 U.S.C. § 1951), "RICO" (18 U.S.C. § 1962), "mail fraud" (18 U.S.C. § 1341), "money laundering" (18 U.S.C. § 1956), and "bribery" (California Penal Code § 86). *See also United States v. Montoya*, 945 F.2d 1068 (9th Cir. 1991); *United States v. Carpenter*, 961 F.2d 824 (9th Cir. 1992); and *United States v. Jackson*, 72 F.3d 1370 (9th Cir. 1995).

Moreover, far from being isolated to the above instances, there are many other examples of the government convicting public officials and others from multiple jurisdictions-- including Missouri--under such bribery theories. *See, e.g., United States v. Simmons*, 154 F.3d 765 (8th Cir. 1998) (Missouri political consultant); *United States v. Griffin*, 154 F.3d 762 (8th Cir. 1998) (Missouri speaker of the House); *United States v. Bereano*, 161 F.3d 2 (4th Cir. 1998) (Maryland lobbyist); *United States v. Woodard*, 149 F.3d 46 (1st Cir. 1998) (Massachusetts House member); *United States v. Sawyer*, 85 F.3d 713 (1st Cir. 1996) (Massachusetts lobbyist); *McCormick v. United States*, 500 U.S. 257 (West Virginia legislator); *see also The Fresno Bee, Big Names Surface in Operation Rezone Case*, Jan. 1, 1999, concerning the recent convictions of certain California municipal officials regarding the same.[5]

These examples illustrate that bribery laws are more narrowly tailored means to prevent actual corruption. Indeed, "bribery laws are designed to punish and deter the corrupt conduct the Government seeks to prevent under [contribution limits]." "In light of [this] alternative[], wholesale limitations that cover contributions having nothing to do with bribery--but with speech central to the First Amendment--are not narrowly tailored." *Colorado Republican*, 116 S. Ct. at 2329 (Thomas, J., concurring in part and dissenting in part).

---

[5] Although Amici are certainly not advocating the federalization of state and local bribery and ethics crimes, Amici raise these examples as evidence of the simple fact that more narrowly tailored means exist to prevent actual corruption.

B. Campaign Contribution Disclosure Provisions Exist to Prevent the Appearance of Corruption

In the 23 years since this Court decided *Buckley*, every state in the Union has adopted a comprehensive statutory scheme requiring candidates to disclose contributions and expenditures before and after elections. Most of these states require the itemization of individual donors who give over a certain threshold amount (usually between $25 and $100) and also prohibit anonymous and "laundered" contributions (i.e., contributions made through straw men). Michael Malbin and Thomas Gais, *The Day After Reform: Sobering Campaign Finance Lessons from the American States, supra*, at 13-14.

Many states also impose disclosure obligations on *contributors* who contribute a cumulative threshold amount. *See Corporate Political Activities 1998: Complying with Campaign Finance, Lobbying and Ethics Laws*, Practising Law Institute Course Handbook Series, Chapters 17 and 20. Thus, in these states, contributions are "double" reported. In California for example, individuals, corporations, and other entities that contribute a cumulative total of $10,000 or more in a year to candidates, political action committees and ballot measure committees combined, must file semi-annual "Major Donor" disclosure reports. *See* FPPC Advice Letter to Randall Zakreski (08/11/93) No. I-93-296. Thus, a person who qualifies as a "Major Donor" in California discloses all of his or her contributions on his or her Major Donor Report, and such contributions are also disclosed on the recipient candidate's report. Other states having "double disclosure" laws include Hawaii, Maryland, Nebraska, Pennsylvania, Utah, Washington, and West Virginia. *See Corporate Political Activities 1998: Complying with Campaign Finance, Lobbying and Ethics Laws, supra*, Chapter 20 at 7-8.

In addition, many states and the Federal Election Commission publish, or are beginning to publish, campaign disclosure reports on the internet. This development will no

doubt provide for more efficient disclosure particularly to the "thousands" or "millions" of people who use the internet as an information source. *See Reno v. American Civil Liberties Union*, 117 S. Ct. at 2335. Indeed, a search on the world wide web indicates that there are hundreds of organizations on the web whose sole purpose is to publish information on campaigns and elections and many such web sites focus particularly on the financing of elections. The web sites established by the California Voter Foundation (www.calvoter.org) and the Center for Responsive Politics (www.crp.org) are just two examples.

The significance of these laws--and, just as important, the utilization of the information provided as a function of such laws--is not so much their intricacies, but rather, the fact that their existence is clear evidence that more narrowly tailored means exist to prevent the appearance of corruption rather than the "blunderbuss approach" of campaign contribution limits. *Colorado Republican*, 116 S. Ct. at 2329 (Thomas, J., concurring in part and dissenting in part). Indeed, as this Court has noted in analogous circumstances, the "less intrusive" means of preventing fraud in the charitable solicitation context are "penal laws used to punish [illicit] conduct directly" and "disclosure" laws. *Schaumberg v. Citizens for a Better Environment*, 444 U.S. 620, 637-38 (1980).

Again, examples from California illustrate this clearly. For instance, in a heavily contested 1994 California Assembly race, candidate Steve Kuykendall accepted a $125,000 contribution from Philip Morris in the last days prior to the election that was properly reported pursuant to California's campaign contribution disclosure law. Although he won the election, the public reaction to this contribution *caused him to refuse to accept any more tobacco money in subsequent campaigns*. Moreover, far from "kowtowing" to Philip Morris as the government and its amici would undoubtedly conclude, the Philip Morris contribution in all likelihood assured Assemblyman Kuykendall's

support for anti-smoking legislation. As the *Los Angeles Times* pointed out:

> And ironically, it could be the Philip Morris contribution that ensures that he backs anti-smoking legislation while in Sacramento. Otherwise, opponents could gain even more fodder for a recall.
>
> . . . .
>
> "He's not going to be dumb enough to vote tobacco."

Ted Johnson, *Kuykendall Blends Pragmatism, Ideology: Legislator Says Accepting Tobacco Firm's $125,000 Contribution Helped Him Beat Incumbent, and Vows It Won't Ease His Opposition to Smoking*, L.A. Times, Dec. 8, 1994; *see also In Legislative Races, Tobacco Is a Hotter Issue Than Ever: Several Candidates Get Burned by Foes for Taking the Industry's Donations. Some Who Accepted Gifts in the Past Are Now Shunning Them*, L.A. Times, Oct. 29, 1996.

A more recent example of disclosure adequately protecting against the appearance of corruption occurred again in California during this past 1998 gubernatorial election cycle. One highly contentious issue during that election was a ballot measure--Proposition 5--which attempted to legalize Indian gambling operations on reservations located in California. During this campaign, the California Legislative Counsel opined that accepting donations from Indian tribes may be illegal subjecting recipients to possible criminal sanctions. *See* Dan Morain and Dave Lesher, *Casino Campaign Donations Questioned: Legislature's Legal Advisor Says That Lawmakers Could Face Criminal Sanctions if They Accept Contributions from Indian Gambling Operations Deemed To Be Illegal*, L.A. Times, July 3, 1998. Shortly after the issue was reported in the press, then gubernatorial candidate Gray Davis, among others, *refused to accept any more Indian tribe campaign contributions to avoid the appearance of impropriety*. *See* Virginia Ellis, *Labor, Trial Lawyers Pour Millions Into Davis' Coffers Funds: A Third of*

Gubernatorial Candidate's Money Comes from Two Groups That Usually Back Democrats, L.A. Times, Oct. 21, 1998.

Given these examples of campaign finance disclosure and vigilant reporting by the press, it is simply incredulous to assert the notion that disclosure is inadequate to prevent the appearance of corruption. *Not only does disclosure allow citizens to make their own judgments about a particular candidate, but such laws also allow the press and opponents to continually monitor campaign activity and alleged correlations between contributors and actions taken in public office.* Certainly, these types of disclosure laws and vigorous reporting by the press further the "discussion of public issues and debate on the qualifications of candidates [which is] integral to the operation of the system of government established by our Constitution." *Buckley*, 424 U.S. at 14; *see also Grosjean v. American Press*, 297 U.S. 233, 250 (1936) (observing that an "informed public opinion is the most potent of all restraints upon misgovernment").

Amici therefore submit that the contribution limits at issue in this case fail strict scrutiny as they are not narrowly tailored:

> If a small minority of political contributions are given to secure appointments for the donors or some other *quid pro quo*, that cannot serve to justify prohibiting all large contributions, the vast majority of which are given not for any such purpose but to further the expression of political views which the candidate and donor share. Where First Amendment rights are involved, a blunderbuss approach which prohibits mostly innocent speech cannot be held a means narrowly and precisely directed to the government interest in the small minority of contributions that are not innocent.

Colorado Republican, 116 U.S. at 2329 (Thomas, J., concurring in part and dissenting in part).

CONCLUSION

The judgment of the Eighth Circuit should therefore be affirmed.

DATED: May, 1999.

Respectfully submitted,

JOHN A. RAMIREZ
Of Counsel
Pacific Legal Foundation
10360 Old Placerville Road,
Suite 100
Sacramento, California 95827
Telephone: (916) 362-2833
Facsimile: (916) 362-2932

SHARON L. BROWNE
Counsel of Record
Pacific Legal Foundation
10360 Old Placerville Road,
Suite 100
Sacramento, California 95827
Telephone: (916) 362-2833
Facsimile: (916) 362-2932

Counsel for Amici Curiae Pacific Legal Foundation and Lincoln Club of Orange County

APPENDICES

Los Angeles Times

Wednesday, December 9, 1998
Metro Desk

Justices May Revive Cap on Contributions Politics: Appeals Court Considers Reinstatement of Prop. 208, the 1996 Ballot Measure To Strictly Limit Campaign Fund-Raising

DAN MORAIN
TIMES STAFF WRITER

SAN FRANCISCO -- After a 1998 political campaign in which state candidates spent more than $200 million, a federal appellate court Tuesday considered reinstating a far-reaching ballot initiative that imposed strict contribution limits.

The three-judge panel of the U.S. 9th Circuit Court of Appeals is deciding the fate of Proposition 208, which was approved by California voters two years ago. The measure limited individual contributions to state Senate and Assembly candidates at $250 and to candidates for statewide offices at $500. If a candidate agreed to spending limits, the individual contribution levels could double.

The initiative's defenders appealed to the circuit court after U.S. District Judge Lawrence Karlton of Sacramento issued an injunction in January blocking Proposition 208. Karlton concluded that the measure's tough contribution and spending limits denied candidates their 1st Amendment right to free speech.

On Tuesday, Judge Stephen Reinhardt repeatedly signaled his belief that the limits appeared to infringe on candidates' ability to campaign. The other two judges seemed more willing to consider upholding the initiative.

"Judging from the questions, two judges seem oriented toward reversing [Karlton], and one toward affirming," said

UCLA law professor Daniel H. Lowenstein, an opponent of the initiative who watched the arguments.

Apparently looking for middle ground, Judge Michael D. Hawkins wondered whether the case could be turned over to the California Supreme Court to rewrite portions of the measure to make it constitutional.

Without Proposition 208, campaign fund-raising and contributions in California have continued to skyrocket. Donations of $100,000 by individuals and corporations to candidates for statewide office are common. Legislative leaders also pull in six- figure donations from individual sources.

Candidates in this year's general election campaign for governor and other statewide offices raised at least $95 million, according to the California Voter Foundation. Candidates for the 100 legislative contests raised about $75 million. Add in primary spending, and the tab for this year's campaigns tops $200 million--not counting ballot initiatives, which weren't covered by Proposition 208.

Under the initiative, a gubernatorial candidate could raise no more than $14 million. Without the limits in place this year, Democratic Gov.-elect Gray Davis raised about $30 million. His Republican opponent, Atty. Gen. Dan Lungren, raised about $22 million.

At several points during Tuesday's court debate, the argument veered into discussions about this year's campaigns and wealthy former Northwest Airlines Chairman Al Checchi, who spent about $40 million--most of it his own money--in his failed effort to win the Democratic gubernatorial nomination. The initiative would not have blocked wealthy people from spending their own money on their campaigns.

Proposition 208's opponents include many Republican and Democratic politicians and many of their supporters, including organized labor, represented Tuesday by San Francisco

attorney Joseph Remcho, and the California Pro-Life Council, represented by attorney Jim Bopp from Terre Haute, Ind.

The initiative's defenders included the state Fair Political Practices Commission and Los Angeles attorney Bradley S. Phillips, who represented the authors, former acting Secretary of State Tony Miller and former California Common Cause director Ruth Holton.

Phillips and FPPC attorney Lawrence Woodlock defended the initiative as a legitimate effort on the voters' part to limit campaign spending and curtail corruption by reducing the size of donations.

"This is one of the aspirations of 208--to put an end to the arms race," Woodlock said.

In his questioning, Hawkins focused on the initiative's contribution caps, noting that Oregon, Washington and Arizona have contribution limits and that $1,000 is the maximum individual donation permitted by federal election law.

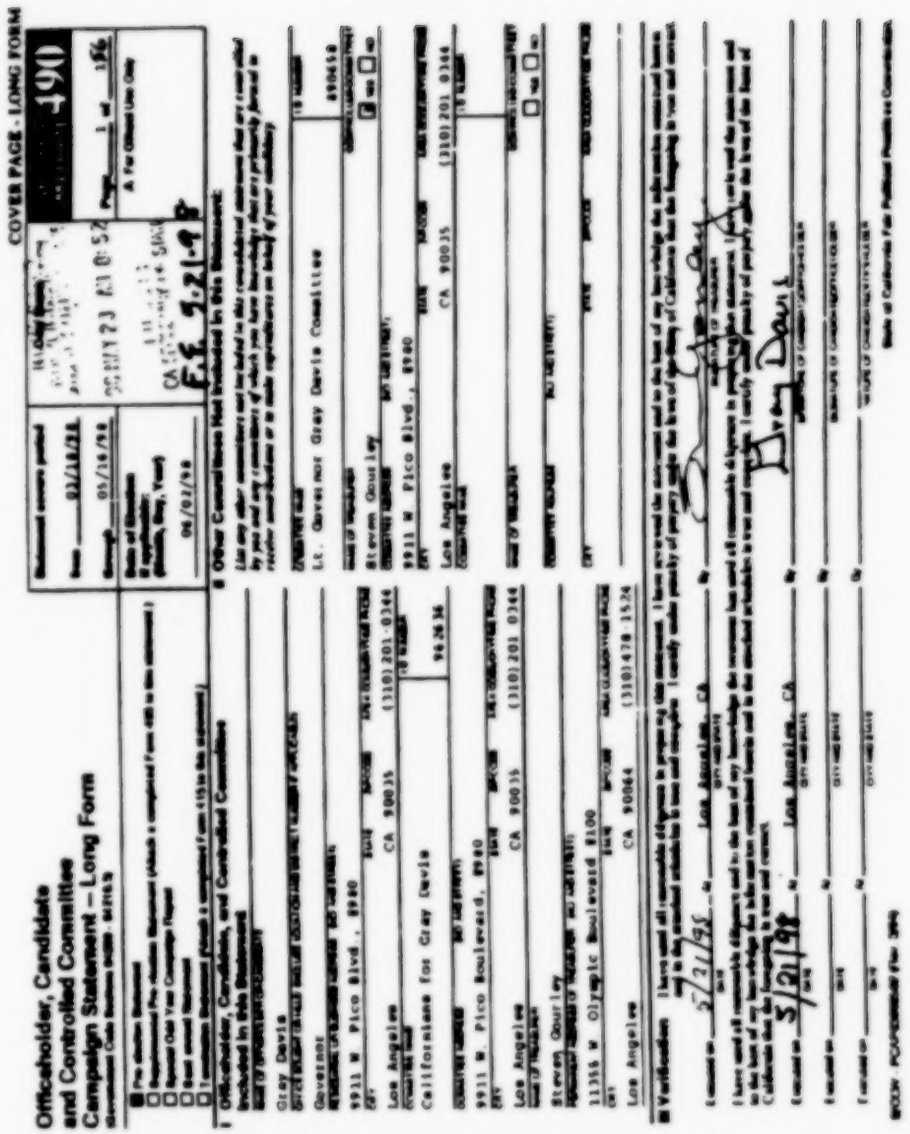
Attorneys attacking the initiative--and Judge Reinhardt--noted that the $1,000 limit was imposed on federal campaigns 24 years ago, when the average congressional race cost $73,000. At the time, only 5% of the donations exceeded $1,000. Today as much as 85% of all donations in California political races exceed the restrictions of Proposition 208, noted Bopp.

On the counsel table, Bopp displayed a copy of a book titled "Bribes" by John T. Noonan, one of the judges on Tuesday's panel.

Bopp said some of the book's passages support his contention that campaign contributions should not be curtailed, as long as they are fully disclosed. Noonan, however, seemed skeptical about the attacks on the initiative. When one lawyer

opposing Proposition 208 said the limits would deny candidates the right to wage a "meaningful mail campaign," Noonan interrupted:

"A meaningful mail campaign?" he said. "I've never known a meaningful mail campaign . . . . People throw it away."


COVER PAGE - LONG FORM

490

Officeholder, Candidate
and Controlled Committee
Campaign Statement – Long Form

Gray Davis

Governor

9911 W. Pico Blvd., 8th

Los Angeles CA 90035

California for Gray Davis

9911 W. Pico Boulevard, 8th

Los Angeles CA 90035

11355 W Olympic Boulevard 8100

Los Angeles CA 90064

5/21/98

5/21/98

SCHEDULE A (cont.)

Schedule A (Continuation Sheet)
Monetary Contributions Received

Statement covers period
From 02/18/98
Through 05/16/98

FPPC Form 490

ID NUMBER 962636

NAME OF OFFICEHOLDER OR CANDIDATE AND CONTROLLED COMMITTEE

Gray Davis, Californians for Gray Davis

DATE RECEIVED	FULL NAME AND ADDRESS OF CONTRIBUTOR	OCCUPATION AND EMPLOYER	AMOUNT RECEIVED THIS PERIOD	CUMULATIVE TO DATE CALENDAR YEAR (JAN 1 - DEC 31)	CUMULATIVE TO DATE OTHER (IF APPLICABLE)
05/13/98	An Institute for Public Safety 5455 Wilshire Blvd., #1810 Los Angeles, CA 90036		150.00	150.00	
05/09/98	American Animal Hospital 3660 Peralta Blvd. Fremont, CA 94536		500.00	500.00	
05/06/98	American Shared Hospital Services P O Box 1 Modesto, CA 95353		5,000.00	5,000.00	
05/14/98	Aatec Audiotext, Inc. 8670 Wilshire Blvd., 2nd Fl. Beverly Hills, CA 90211		500.00	500.00	
05/12/98	Martin B Appel 10940 Wilshire Blvd., 7th Fl Los Angeles, CA 90024	Attorney Hill, Wynne, Troop et al.	5,000.00	5,000.00	
05/01/98	Rand B April 561 Moreno Av Los Angeles, CA 90049	Managing Partner Skadden Arps Slate et al	250.00	250.00	
		SUBTOTAL $	11,400.00		

Appendix B-2

SCHEDULE E (cont.)

Schedule E
(Continuation Sheet)
Payments and Contributions
(Ot. Than Loans) Made

Statement covers period
From 02/18/98
Through 05/16/98

FPPC Form 490

ID NUMBER 962636

NAME OF OFFICEHOLDER OR CANDIDATE AND CONTROLLED COMMITTEE

Gray Davis, Californians for Gray Davis

NAME AND ADDRESS OF PAYEE, CREDITOR, OR TYPE OF PAYMENT OF CONTRIBUTION (IF COMMITTEE, IN ADDITION TO COMMITTEE'S NAME AND ADDRESS, ENTER ID NUMBER OR IF NO ID NUMBER HAS BEEN ASSIGNED, ENTER THE REQUIRED NAME & ADDRESS)	CODE	DESCRIPTION OF PAYMENT (IF REQUIRED, OR IF OTHER THAN LOAN, GIVE THE AMOUNT AND DESCRIPTION BELOW)	AMOUNT PAID
Budgetel Communications Inc. 4119 Sepulveda Bl Culver City, CA 90230	G		132.50
Business Media Services 3112 O St., #5 Sacramento, CA 95816		3,505.01 Video Clips 2,106.66 Video Clips	5,611.67
James A Ryard 19305 Princetown Ave. Carson, CA 90746		1,325.35 Salary 956.48 Salary 956.48 Salary	3,238.31
CA Democratic Alliance 2912 Old Bennett Ridge Rd. Santa Rosa, CA 95404		Slate Mail Program	1,000.00
CA Democratic Party 911 20th St Sacramento, CA 95814		2,110.00 Convention Costs 534.00 Convention Costs 500.00 Convention Costs	3,144.00
		SUBTOTAL $	13,126.48

Appendix B-3

Appendix B-4

Officeholder, Candidate and Controlled Committee Campaign Statement – Long Form

COVER PAGE - LONG FORM

490

Statement covers period from 03/18/98 through 05/16/98

Date of Election (Month, Day, Year): 06/02/98

Page 1 of ___

5.21.98

[illegible] Pre-election Statement
☐ Supplemental Pre-election Statement
☐ Special Odd-Year Campaign Report
☐ Semi-annual Statement
☐ Termination Statement

I Officeholder, Candidate, and Controlled Committee Included in this Statement

Alfred A. Checchi

Governor

5757 Wilshire Blvd., Suite #481

Los Angeles CA 90036 (213)930-2545

Checchi for Governor — ID Number 970057

5757 Wilshire Blvd., Suite #481

Los Angeles CA 90036 (213)930 2545

Kenneth W. Slutsky

5757 Wilshire Blvd., Suite #481

Los Angeles CA 90036 (213)930 2545

II Other Committees Not Included in this Statement:

List any other committees not included in this consolidated statement that are controlled by you and any committees of which you have knowledge that are primarily formed to receive contributions or to make expenditures on behalf of your candidacy.

III Verification

Executed on 05/20/98 at Los Angeles, CA By [signature]

Executed on 05/20/98 at Los Angeles, CA By [signature]

State of California Fair Political Practices Commission

Appendix B-5

Schedule A
Monetary Contributions Received

SCHEDULE A

490

Statement covers period from 03/18/98 through 05/16/98

Page 4 of 164

ID Number 970057

Name of Officeholder or Candidate and Controlled Committee: Alfred A. Checchi, Checchi for Governor

Date Received	Full Name and Address of Contributor	Occupation and Employer	Amount Received This Period	Cumulative to Date Calendar Year	Cumulative to Date Other
03/31/98 04/13/98 05/14/98 05/16/98 04/29/98	Alfred A. Checchi 5757 Wilshire Blvd., Suite #481 Los Angeles, CA 90036	Businessman Self-employed	3,500,000.00 2,350,000.00 3,000,000.00 4,000,000.00 2,500,000.00	39,350,000.00	
04/20/98	Alfred A. Checchi (continued)		2,500,000.00		

SUBTOTAL $ 17,850,000.00

Monetary Contributions Summary

1. Amount received this period - contributions of $100 or more. (Include all Schedule A subtotals.) $ 17,850,000.00
2. Amount received this period - contributions of less than $100. (Do not itemize.) $ 0.00
3. Total monetary contributions received this period. (Add Lines 1 and 2. Enter here and on the Summary Page, Column A, Line 1.) TOTAL $ 17,850,000.00

Schedule E
(Continuation Sheet)
Payments and Contributions
(Other Than Loans) Made

SCHEDULE E (cont.)

Statement covers period: from 03/19/98 through 05/16/98

FORM 490

Page 8 of 164

NAME OF OFFICEHOLDER OR CANDIDATE AND CONTROLLED COMMITTEE: Alfred A. Checchi, Checchi for Governor

I.D. NUMBER: 970057

NAME AND ADDRESS OF PAYEE, CREDITOR, OR RECIPIENT OF CONTRIBUTION (IF COMMITTEE, IN ADDITION TO COMMITTEE'S NAME AND ADDRESS, ENTER I.D. NUMBER OR, IF NO I.D. NUMBER HAS BEEN ASSIGNED, ENTER TREASURER'S NAME & ADDRESS)	CODE	OR	DESCRIPTION OF PAYMENT (IMPORTANT: DO NOT ITEMIZE THE PAYMENT OF ACCRUED EXPENSES ON SCHEDULE E. REPORT ONLY THE LUMP SUM OF SUCH PAYMENTS ON LINE 4 OF THE SUMMARY SECTION BELOW)	AMOUNT PAID
Ampco Parking 5757 Wilshire Blvd. Los Angeles, CA 90036	G			8,516.00
AMS Response 16105 Gundry Avenue Paramount, CA 90723	L			193,148.78
Laura Arciniega 5757 Wilshire Blvd., Suite #481 Los Angeles, Ca. CA 90036	G		Subvendor: See Schedule G	4,425.90
Arroyo's Mexican Cafe 524 S. Center Street Stockton, CA 95203	G			1,616.26
AT&T PO Box 10192 Van Nuys, CA 91410-0192	G			13,392.82
			SUBTOTAL $	221,099.76

Appendix B-6

Schedule E
(Continuation Sheet)
Payments and Contributions
(Other Than Loans) Made

SCHEDULE E (cont.)

Statement covers period: from 03/19/98 through 05/16/98

FORM 490

Page 12 of 164

NAME OF OFFICEHOLDER OR CANDIDATE AND CONTROLLED COMMITTEE: Alfred A. Checchi, Checchi for Governor

I.D. NUMBER: 970057

NAME AND ADDRESS OF PAYEE, CREDITOR, OR RECIPIENT OF CONTRIBUTION (IF COMMITTEE, IN ADDITION TO COMMITTEE'S NAME AND ADDRESS, ENTER I.D. NUMBER OR, IF NO I.D. NUMBER HAS BEEN ASSIGNED, ENTER TREASURER'S NAME & ADDRESS)	CODE	OR	DESCRIPTION OF PAYMENT (IMPORTANT: DO NOT ITEMIZE THE PAYMENT OF ACCRUED EXPENSES ON SCHEDULE E. REPORT ONLY THE LUMP SUM OF SUCH PAYMENTS ON LINE 4 OF THE SUMMARY SECTION BELOW)	AMOUNT PAID
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Appendix B-7

Appendix C-1

Los Angeles Times
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Tuesday, August 27, 1996
Metro Desk

Legislators Bypass Mass Mailing Ban

Government: Loopholes Used to Send 35 Million Pieces at Taxpayer Expense

PAUL JACOBS; VIRGINIA ELLIS
TIMES STAFF WRITERS

POLITICAL PERSUASION. Money and patronage in California. One in an occasional series

Californians in 1988 voted for an initiative that in the plainest of language outlawed mass mailings by elected officials at public expense.

Since then, however, state lawmakers have sent out more than 35 million pieces of taxpayer-financed bulk mail. Much of it came from officials facing tough elections.

Legislators have spent almost $6 million on well-organized "communications" programs by taking advantage of regulations that created major loopholes in the law, the Times has found.

The mailings have accelerated in the Assembly during the current two-year session, primarily because Republican members have sent more than 10 million pieces to constituents. Records show that the three most prolific GOP members sent out more mail than all the Democrats combined.

Many mailers are highly political in tone and baldly self-promotional, touting partisan views on such hot-button issues as welfare and crime, gas tax cuts and illegal immigration.

A number appear frivolous, such as computer-generated letters urging constituents to "Take a Hike!" to celebrate National Parks and Recreation Month.

Others are largely informational, some without discernible legislative purpose, such as notices of free eye exams and invitations to have children fingerprinted. One letter marks the 23rd anniversary of the end of the Vietnam War, another the fifth anniversary of the Gulf War.

What happened in the eight years since passage of Proposition 73 shows how the expressed will of the state's voters can be circumvented and diluted. It also demonstrates the inventiveness of elected officials in finding ways to use tax funds to promote themselves and maintain their grip on public office.

Defenders say mass mailings help them keep in touch with constituents, who welcome the contact. They also say exemptions allowed by the state's political watchdog agency permit them to send as many letters as they want, providing they do not exceed their budget.

"They give you a chunk of money. You can do a number of things with it," said Assembly Majority Leader James E. Rogan (R-Glendale), who has sent more than 620,000 pieces of mail this session. "You can take junkets or you can try to keep your constituents posted on what's going on. I don't take junkets."

Now, because of criticism from some legislators and a flap over a provocative GOP mailer on the new three-strikes law, the Fair Political Practices Commission is considering whether rules changes are needed.

A Powerful Perk

Free mailing privileges have long been a prime perk of legislators--one that challengers say gives an unfair edge to incumbents. And the party in control in each house, through the power of the purse, has always been able to fire out a larger volume of mail than the minority party.

The 1988 ballot measure sought to change all that with the simple admonition: "No newsletter or other mass mailing shall be sent at public expense."

Mass mailing, said the authors of Proposition 73, amounted to electioneering at public expense. "The mailings were little more than thinly disguised campaign pieces," said co-author Sen. Ross Johnson (R-Irvine).

Even a rather neutral piece, such as an opinion survey or list of fire safety tips, can help a lawmaker with name recognition in his district. "Your name is the name of the game," said another co-author, Sen. Quentin L. Kopp (I-San Francisco).

Mail records, obtained under the Legislative Open Records Act, show that after passage of the initiative, the volume of bulk mail sent out by the state Senate dropped sharply and has never rebounded.

But in the Assembly, the amount of mail had been building slowly under the Democrats, only to shoot up suddenly after the Republicans gained a majority in the 1994 elections.

Over the last 21 months, records show, GOP members have engaged in a mass mailing spree, sending out more than six times as much as Assembly Democrats, largely targeted toward districts with contested races.

Five Democrats, some facing stiff election fights, have sent at least 100,000 pieces of mail. But no Democrats are among the top 20 mail users identified by a Times computerized analysis of mail and postage records.

The ban was never popular among legislators, many of whom say that communication with voters is a vital part of their job. And the line between legislators informing their constituents and promoting their own political fortunes is not always a clear one.

Immediately after passage of Proposition 73, elected officials started complaining that the prohibition, if strictly enforced, would bring government to a halt--and might even prevent the mailing of income tax refunds and voter information pamphlets.

The Fair Political Practices Commission responded by writing rules intended to keep the government's doors open for business by allowing broad exceptions to the law.

These rules reinforced the ban on slick newsletters featuring photos of lawmakers and flattering articles on their accomplishments.

But the regulations opened the way for other sorts of mass mailings that critics say fulfill much the same purpose. For example, elected officials could mail as many notices of public meetings, such as town hall forums, as they wished.

This, Johnson warned at the time, was "a very major loophole that my colleagues and I in the California Legislature will be driving Mack trucks through very quickly."

Proposition 73 allowed each legislator to send up to 200 copies of a given letter in one month without violating the mass-mailing ban. But after a series of rulings by the FPPC, lawmakers quickly figured out they could ship thousands of computer-generated letters at a time.

For example, one member sent about 70 different letters one month in batches of 200 or less--more than 14,000 letters in all.

The FPPC commissioners "distorted Proposition 73 in the regulations. They created a means of evading it," Kopp said.

In recent years, Johnson and Kopp have turned to mass mailings, but the numbers are relatively small and neither has sent out bulk mail close to election day.

Mass Mailing Machine

Mass mailing has become institutionalized in the Assembly and the Senate, but with a difference.

Senators are allowed to spend no more than $8,800 annually and cannot make large-scale mailings in the three months before an election.

Assembly members can spend as much as they want of their $240,000-a-year basic office budget on mailing. Until this month, members were allowed to send out publicly funded mailers right up until election day.

The legislative staffs of both houses write the mailers, and these are reviewed for conformance with FPPC regulations. The letters are printed and mailed from legislative offices at public expense.

The party caucuses encourage members to take advantage of these services.

"Unsolicited mail can provide different types of outreach for our Assembly members," states an internal memorandum earlier this year from the Assembly's Republican Caucus. It suggested that the names of office visitors, new homeowners and newly registered voters in a legislator's district can be computerized so they can be contacted for town hall meetings or future mailings.

In practice, the Times found, the mailings are used most by legislators facing a stiff challenge in their district or trying to advance to another office.

Republican Assemblyman Peter Frusetta of Tres Pinos has sent out more publicly funded mail in the last 21 months than any other lawmaker--more than 665,000 pieces so far this session. A lifelong rancher who calls himself the "cowboy in the Capitol," he faces a tough rematch against a Democratic

opponent he narrowly defeated two years ago. The outcome could determine which party controls the Assembly.

Frusetta sends out many computer-generated letters in batches of 200 letters at a time. In late June, he mailed out more than 14,000 of these letters. One batch, paying homage to the U.S. flag, called for support of a federal constitutional amendment to make flag desecration a crime. Another praised legislation to bar local school boards from using taxpayer funds on behalf of candidates or ballot measures. "As a taxpayer I don't believe my tax dollars should be used for political purpose and I hope you agree," he wrote.

Frusetta said in an interview: "Lots of people come up to me and say they like the letters. They say they are informative. That encourages me to continue."

"I see it as a way to keep the constituents informed, to keep their interest alive, to get them involved in controversial issues. I see it as a public service."

Second to Frusetta in mailing is Rogan, the Assembly majority leader, who faces a millionaire Democratic business-man in a key race this November in the partisan struggle for control of the U.S. House of Representatives.

The Proposition 73 restrictions were designed in part to prevent lawmakers from using mailers for partisan purposes. And the FPPC tried to eliminate self-serving statements in mailers by barring personal pronouns such as "I," "me" or "my."

But one of Rogan's letters sent out to 43,000 constituents attacked "the Democrat-controlled Senate" for stalling or killing "important job-creating legislation that passed the Assembly."

Under the FPPC's rules, Rogan could not sign those letters, yet he was clearly identified as the author. His name

appeared on an official-looking letterhead in large capital letters, because the rules allow it.

Last spring, Democratic Assemblyman Willard H. Murray Jr. of Paramount sent out more than 100,000 pieces of subsidized mail to his district, most of them fliers suitable for posting on household bulletin boards, with information on local recreational programs and fire safety.

This mail--the only large-scale mailings Murray sent out all session--went out in the final weeks before he lost narrowly to then-Assemblywoman Juanita McDonald (D-Carson) and others in a race for a vacant congressional seat.

Murray denied that the mailer was used to enhance his election chances. "We got behind [in the mailing], and they all wound up going out then," he said.

Rethinking the Rules

Co-author Kopp and other lawmakers have been urging the Fair Political Practices Commission to reexamine the rules that allowed lawmakers to mail millions of mass mailers, despite the ban.

The commissioners are promising to reconsider the regulations, perhaps as soon as their November meeting, said commission general counsel Steven G. Churchwell.

The review is prompted by Kopp and others and by a recent flap over a "Save Three Strikes" mailer sent out by a number of Republican Assembly members.

The stridently pro-GOP mailer attacks "soft-on-crime politicians" led by Senate President Pro Tem Bill Lockyer (D-Hayward) for "doing all they can to destroy the anti-crime gains we have made these past two years."

But Churchwell cautions that it will be difficult to craft rules to end mailings that appear too partisan or are too

flattering to the senders. "It's easy to say the goal is stop fluff pieces," he said. "How do you do that?"

University of Virginia professor Larry J. Sabato, who has written about congressional abuse of mailing privileges, said: "Some of the most ingenious people in the world are attracted to politics. And there will never be a way to design a law to keep [mailings] from being abused."

The party in power sees to it that its members have the resources to get out the mail, said Democratic campaign consultant Richie Ross, who helped plan mail programs as the Assembly's chief administrative officer under Democratic Speaker Willie Brown.

"Traditionally what happened was the vulnerable incumbents sent out more mail than the non- vulnerable incumbents, if your party was in control of the numbers," Ross said.

And direct mail to voters plays a crucial role in winning elections, he said. "Nine times out of 10, campaigns are won by the candidate who did the most mail."

Before passage of Proposition 73, officeholders were barred from sending mass mail once they declared for public office. After enactment of the initiative, the Senate imposed a rule of its own, banning mass mail in the three months before an election.

The Assembly had no such rule until this month, when Speaker Curt Pringle (R-Garden Grove) proposed one prohibiting all Assembly members from sending taxpayer-funded mass mail within 60 days of an election "to remove the potential to misconstrue any publicly financed mailings as intended for political purpose."

A spokesman for Pringle said Republicans had an informal rule barring mailings any closer than six weeks before the March 26 primary election.

A score of GOP members ignored this policy, sending 874,000 pieces in that period, according to logs at the Assembly Reproduction Center.

During the same period, seven Assembly Democrats mailed out 208,000 pieces, including those sent out by Murray.

Democrats have objected to Pringle's 60-day cutoff proposal, and the Assembly Rules Committee agreed to a compromise, 45-day cutoff--a decision that came as lawmakers, primarily Republicans, were already deluging their districts with mail.

Assemblyman Jim Cunneen of Cupertino, a first-term Republican, has already sent more than 565,000 pieces of mail this session, many announcing town hall meetings with Cunneen.

Cunneen, who is facing former California Teachers Assn. President Ed Foglia in another key Assembly race, said: "You don't have to come to a fund-raiser to ask me a question."

Foglia complains that Cunneen's mailers have made his challenge more difficult.

"It's a tremendous advantage," he said. "I just thought that under Proposition73, this was taken care of."

Publicly Financed Mail

Despite a ban on mass mailing, state legislators have taken advantage of loopholes in the law in increase the amount of mail they have been sending out at public expense. Since gaining a majority in the Assembly two years ago, Republican members have increased their mail dramatically.

Total Assembly mailing cost

Source: Assembly Daily File (1990-1991); Assembly Rules Committee (1995)

Note: Includes all postage by individual members, does not include printing or processing costs. Totals for 1995 are from unaudited, unreconciled data.

Top Spenders

These are the Assembly members who spent the most on mass mailings from Jan.1, 1995, to Aug. 19, 1996.

ASSEMBLY MEMBER: 1. Peter Frusetta (R-Tres Pinos)

PIECES: 665,879

POSTAGE: $105,618

COMMENTS: Top target of Democrats in crucial race.

ASSEMBLY MEMBER: 2. James E. Rogan (R-Glendale)

PIECES: 623,977

POSTAGE: $101,705

COMMENTS: Running for Congress against millionaire Democrat.

ASSEMBLY MEMBER: 3. Jim Morrissey (R-Santa Ana)

PIECES: 617,171

POSTAGE: $93,841

COMMENTS: Seeks reelection in once-Democratic district.

ASSEMBLY MEMBER: 4. Jim Cunneen (R-Cupertino)

PIECES: 565,648

POSTAGE: $79,235

COMMENTS: Democrats threaten to target this race.

ASSEMBLY MEMBER: 5. Bill Hoge (R-Pasadena)

PIECES: 496,794

POSTAGE: $78,265

COMMENTS: Running against popular college president.

ASSEMBLY MEMBER: 6. Jim Battin (R-La Quinta)

PIECES: 470,637

POSTAGE: $71,700

COMMENTS: Faces ex-assemblyman in district with Democratic edge.

ASSEMBLY MEMBER: 7. Howard Kaloogian (R-Carlsbad)

PIECES: 465,555

POSTAGE: $70,370

COMMENTS: Possible challenge by independent after primary.

ASSEMBLY MEMBER: 8. Phil Hawkins (R-Bellflower)

PIECES: 459,770

POSTAGE: $69,702

COMMENTS: Faces ex-assemblywoman in Senate bid.

ASSEMBLY MEMBER: 9. Steven T. Kuykendall

(R-Rancho P.V.)

PIECES: 443,008

POSTAGE: $70,643

COMMENTS: Narrow winner in 1994; has new Democratic challenger.

ASSEMBLY MEMBER: 10. Brett Granlund (R-Yucaipa)

PIECES: 442,119

POSTAGE: $70,412

COMMENTS: Safe after winning contested GOP primary.

ASSEMBLY MEMBER: 11. George House (R-Hughson)

PIECES: 421,618

POSTAGE: $66,115

COMMENTS: Target of Democrats in seat they once held.

ASSEMBLY MEMBER: 12. Steve Baldwin (R-E1 Cajon)

PIECES: 408,313

POSTAGE: $61,990

COMMENTS: Seeks reelection in once-Democratic district.

ASSEMBLY MEMBER: 13. Marilyn C. Brewer (R-Irvine)

PIECES: 383,379

POSTAGE: $57,191

COMMENTS: Withstood primary challenge.

ASSEMBLY MEMBER: 14. Fred Aguiar (R-Chino)

PIECES: 377,842

POSTAGE: $56,975

COMMENTS: Considered a safe bet for reelection.

ASSEMBLY MEMBER: 15. Scott Baugh (R-Huntington Beach)

PIECES: 334,932

POSTAGE: $50,266

COMMENTS: Election law indictment clouds chances.

ASSEMBLY MEMBER: 16. Tom J. Bordonaro Jr. (R-Paso Robles)

PIECES: 310,779

POSTAGE: $48,083

COMMENTS: Seeks reelection in safe district.

ASSEMBLY MEMBER: 17. Brooks Firestone (R-Los Olivos)

PIECES: 292,788

POSTAGE: $48,169

COMMENTS: No threat expected in reelection effort.

ASSEMBLY MEMBER: 18. Jim Brulte

(R-Rancho Cucamonga)

PIECES: 265,631

POSTAGE: $39,202

COMMENTS: Stepping up to Senate in safe Republican district.

ASSEMBLY MEMBER: 19. Richard K. Rainey (R-Walnut Creek)

PIECES: 243,578

POSTAGE: $33,848

COMMENTS: Senate race against Democratic county supervisor.

ASSEMBLY MEMBER: 20. Gary G. Miller (R-West Covina)

PIECES: 242,125

POSTAGE: $36,804

COMMENTS: Easy time expected in reelection bid.

Source: Assembly Reproduction Center

About This Series

In this election year, control of the state Legislature is on the line. Two initiatives seeking to reform campaign fund-raising are on the November ballot. And term limits for

the state Assembly take effect--prompted in part by rising public concern about the way politicians use incumbency to advance their careers.

In this occasional series, the Times explores how money influences governmental action and how elected officials use their positions to reward supporters and improve their prospects at the polls.

TODAY: How incumbents, particularly Assembly Republicans, are taking advantage of loopholes in a mass mailing ban to send millions of pieces to voters in their districts at taxpayers' expense.

TABULAR OR GRAPHIC MATERIAL SET FORTH IN THIS DOCUMENT IS NOT DISPLAYABLE

Los Angeles Times

Sunday, November 5, 1995
Metro; PART-B; Metro Desk
POLITICS '95

A Behind-the-Scenes Look at Orange County's Political Life; Foes Frankly Furious at Allen's Late Mailers at Taxpayers' Expense

Lacking the big bucks to fight a Nov. 28 recall, embattled Assemblywoman Doris Allen is using her prerogative as a state lawmaker to dispatch a ton of mail at taxpayer expense to voters in her district.

Allen is mailing a non-political brochure, which announces a series of seven "town hall" meetings Nov. 17 and 18, to 160,000 households in the 67th District. Under state law, the mass mailing is allowable as long as the lawmaker's name appears just twice--announcing the meeting, and as part of a return address.

At 15 cents apiece, the mailing will cost Allen's office budget $24,000. While the move doesn't violate state law, recall proponents say she is trampling a cardinal tenet of Assembly Republicans--thou shall not use franking privileges within six weeks of an election.

"It's no secret what she's doing," groused Jeff Flint, a recall organizer. "She's low on funds so she's campaigning against the recall at taxpayer expense." The recall was launched after Allen cut a deal with Assembly Democrats to have herself elected Speaker, in what GOP leaders called a betrayal of the party. She has since resigned the Speaker's post.

Gil Ferguson, a former Orange County assemblyman helping Allen fight the recall, countered that the town hall

meetings will simply give Allen a chance to set the record straight on a variety of issues.

County Republican leaders "have cut off her money. Now they're objecting to her trying to get the truth out to her own constituents," Ferguson said.

The Sacramento Bee
Copyright 1994
Sunday, June 19, 1994
MAIN NEWS

It Wasn't Easy to Sting Capitol

Obstacle-Plagued 8-Year Effort

Dan Bernstein Bee Capitol Bureau
Capitol Sting Operation

The sun had just come up that Friday in the late summer of 1987, and FBI agents in Sacramento were already at work, hoping that a big break in their Capitol sting operation would come waltzing through the door.

The agents had set up a ruse to lure a burly, astute state Senate aide named John Shahabian into the sprawling federal complex that houses their offices on Cottage Way at 7 a.m.

Although Shahabian arrived on time, it took nearly 14 hours of coaxing, prodding and threatening before authorities secured his cooperation as a government informant in the undercover operation. Until then, the FBI was having trouble penetrating corruption at the highest levels of the Legislature because it lacked an insider whom lawmakers trusted.

"At different parts in our discussion, I almost ended it because it wasn't clear to me that he was going to be 100 percent truthful," recalled James Wedick Jr., the lead FBI agent in the case. "If he was going to [cooperate], he was going to have to demonstrate that day his commitment."

Shahabian finally agreed to begin wearing a hidden recording device the very next day and to tape his conversation with a state senator. With that, the investigation flourished and ultimately resulted in the convictions of more than a dozen lawmakers, legislative aides, lobbyists, and other public figures.

The final convictions came Thursday, when a Sacramento federal jury returned guilty verdicts against state Senator

Frank Hill, R-Whittier, and former Democratic legislative aide Terry Frost on extortion and conspiracy charges.

While federal prosecutors chalked up a perfect record of convictions, the eight-year investigation was fraught with obstacles and headaches.

Extraordinary restrictions on the undercover probe were imposed by top federal officials in Washington. Key witnesses refused to talk. Records at the Capitol were destroyed.

"There were times where you just got fed up banging your head against a wall," said Assistant U.S. Attorney John Vincent. "Sometimes I would come back here, slump in my chair and think, 'God, why bother?'"

Because of the public's low regard for politicians, some defense lawyers have claimed that legislators and other Capitol figures were an easy mark--particularly when they were captured on video and audio tapes.

But prosecutors said they never thought any of the cases would be easy, because they were operating in a legal gray area of duly reported campaign contributions.

"We all felt these cases would be difficult to prove," said David Levi, a former U.S. attorney in Sacramento who is now a federal judge. "I felt that these would be very articulate defendants. These are very intelligent people. They are winning people, persuasive people, and they're used to dealing with controversy and to speaking in public."

One by one they fell, however.

The casualty list included three once-powerful Democratic state senators--Joseph Montoya, Paul Carpenter and Alan Robbins--as well as a former Assembly Republican leader, Patrick Nolan of Glendale.

The investigation also netted former California Coastal Commissioner Mark Nathanson, former Sacramento lobbyist

Clayton Jackson, and former legislative aides Tyrone Netters, Darryl Freeman, and Karin Watson.

And, in a spinoff case that preceded the Capitol corruption cases, prosecutors secured influence-peddling convictions of former Yolo Sheriff Rodney Graham and his undersheriff, Wendell Luttrull.

How Sting Was Launched

The sting operation was the brainchild of FBI agent Wedick, who began toying with the idea in 1982, when an informant recorded conversations with a legislative staffer suggesting that legislation was for sale.

With several other major cases on his plate, Wedick put off the notion until 1984, when he teamed up with then-Assistant U.S. Attorneys George O'Connell and Levi.

To help justify an undercover operation at the Capitol, they had the informant record additional conversations with the staffer and compiled a record of other alleged influence-peddling in the Legislature from public complaints and newspaper articles.

Their idea was to introduce a bogus special-interest bill on behalf of a dummy company whose representatives--undercover FBI agents--were ready to pay legislators who were willing to help them enact the legislation.

Officials at the U.S. Department of Justice and at FBI headquarters were skeptical of the proposal because it was the first time that the FBI had proposed creating legislation to catch corrupt politicians.

"The initial response was . . . 'The chances are slim we're going to approve something like this,'" said Wedick, who last month received a national FBI award for his work in the case. "This was such an intrusive kind of a step . . . for the federal government to reach into state government."

Still, the trio managed to convince a special undercover committee of the Justice Department that the operation was warranted and, in October, 1985, they received approval for Operation Brispec--bribery-special interest.

But officials in Washington imposed some special conditions: There would be no secret tape recording of any legislators not specifically targeted, and no payments would be made without prior consent from top-level FBI officials.

That second condition led in 1986 to a frantic phone call at 3 a.m. to try to reach then-FBI Director William Webster at home to approve a $30,000 payment demanded by one legislative staff member. Webster couldn't be reached.

"It was frustrating," said Levi. "It was like a bad joke."

The undercover operation featured a bogus FBI company called Gulf Shrimp Fisheries, which purportedly wanted to build a warehouse and packaging plant in West Sacramento to provide shrimp to restaurants throughout Northern California. The firm was pushing a bill--drafted by federal prosecutors--to create an exemption in the state's banking requirements that would enable the firm to reduce the cost of a construction loan for its proposed plant.

Prosecutors almost tipped their hand early on. O'Connell said that before agents were about to submit their copy of the bogus bill to the Legislature, he decided as an afterthought to check the stationery: When he held the paper up to the light, it revealed a Department of Justice watermark. The bill was retyped on plain paper, and it was then introduced in the Assembly.

Operating under utmost secrecy even within their own office, Levi and O'Connell occasionally would seek inspiration from slogans written on a blackboard in Levi's office. "Who dares, wins," was a favorite of O'Connell's, who, like Levi, later headed the U.S. attorney's office.

Ironically, at the time they launched the sting, Sacramento officials were completely unaware that Nolan had pointed a finger at Assembly Speaker Willie Brown in a series of conversations with FBI agents in Los Angeles. Nolan, the Assembly Republican leader, claimed in mid-1985 that Brown directed certain Democratic lawmakers to "milk" lobbyists for campaign contributions in return for special-interest bills. Sacramento officials said they first learned of those allegations when they were reported in the Bee.

In fact, Levi said that despite widespread speculation--some fueled by Brown himself--the powerful San Francisco Democrat was never a target or a subject of the undercover investigation. But Levi would neither confirm nor deny that Brown might have been investigated in a spinoff probe.

Getting Past the Staffers

Although the FBI did not have an insider when it launched the sting in January, 1986, it did have a reliable informant: Marvin Levin, a Sacramento developer with a squeaky-clean past who was willing to strap a tape recorder to his boot and record conversations with acquaintances at the Capitol.

Pretending to be a family friend of FBI undercover agent Jack Brennan--who was posing as a sleazy Alabama businessman--Levin introduced the agent to Freeman, a former legislative staff member who had become a lobbyist.

Freeman steered the agent to Netters, an aide to Assembly-woman Gwen Moore, D-Los Angeles. Netters immediately began demanding campaign contributions in return for his assistance on the shrimp bill, while Freeman pocketed payments for arranging a loan application through a nonprofit agency he headed.

But Brennan encountered resistance from Netters when he attempted to meet personally with Moore and other legislators

to discuss his contributions, making it nearly impossible to gather direct evidence against targets.

Brennan had a little more luck in the Senate, where he managed to tape several conversations with Paul Carpenter, to whom he had contributed $20,000 at the direction of Shahabian, one of his top aides.

In all, more than $100,000 worth of campaign contributions and "honorariums" were given to legislators and others by undercover FBI agents during the operation.

However, some in the U.S. attorney's office thought the case against Carpenter could not be won without stronger evidence that Shahabian was soliciting the contributions at Carpenter's behest. Even after Shahabian agreed to cooperate and testify against his former boss, one key prosecutor thought that the senator could effectively refute that testimony.

That prosecutor, John Panneton, said a key break in the Carpenter case came in late 1989, when he told Carpenter's lawyers that the senator would be indicted within 10 days unless he could convince prosecutors otherwise.

"There was a degree of puffing in that statement," Panneton said, adding that Carpenter might not have been indicted if he hadn't asked for a meeting with the U.S. attorney and tried to explain away his conduct with claims that he was doing his own investigation.

"For the next 3 1/2 hours, we had a prosecutors' delight," Panneton said. "For the first time, he [Carpenter] laid out his knowledge that he knew what John Shahabian was doing and that was a tremendous hole in the case."

Back in 1987, however, the case against Carpenter had been tenuous, and there had been no case against Moore. Without indictments against elected officials, the investigation might have been seen as another disappointing effort by the FBI,

which had flubbed two Capitol corruption investigations in the 1970s.

So a decision was made to try to extend the undercover operation.

Given that the sting bill had been vetoed by then-Governor George Deukmejian at the request of the FBI, federal officials needed a new bill, a new scenario, and a new entree into the Legislature.

Enter John Shahabian.

Even though he went on to gather crucial taped evidence and testify against some of the biggest targets of the probe, Shahabian caused fits for federal authorities along the way

Months after agreeing to cooperate, he hired a lawyer and successfully demanded full immunity from prosecution despite being told that no deals could be made until after he completed his work as an informant. When the cases in which he was involved went to trial, he waited until the last minute to review transcripts on which he would be called to testify.

And last year, he wrote a letter to prosecutors, which became public, accusing the FBI of "unethical police methods" in persuading him to become an informant. Federal authorities denied those allegations but were afraid to call Shahabian as a witness in the last corruption case that went to trial.

"There was a constant tension between John and the FBI," said Panneton, who is now in private practice. "He threatened to walk out at least once. He always had the sense that he was betraying his friends at the Legislature."

All-night Raid at Capitol

One of Shahabian's most important contributions was introducing an undercover FBI agent to Karin Watson, a key aide to Nolan who later admitted to investigators that her role

was to identify legislation that could be used to solicit campaign contributions from special interests.

That, in turn, led to separate videotaped meetings between FBI agent George Murray--posing as Georgia businessman George Miller--and Nolan and Hill at the Hyatt Regency Sacramento, where money changed hands.

On August 24, 1988, after Deukmejian had vetoed a second shrimp bill, the FBI decided to confront Watson with evidence of extortion on her part and see if she would cooperate and gather further evidence against Nolan and Hill.

Wedick interviewed Watson for nearly six hours that day, but she denied any knowledge of a money-for-votes scheme.

"She lied her way all the way through it," Wedick said. "She never told the truth, so I could never ask her to wear a wire."

Still, Watson said she would cooperate with investigators and consented to have her Capitol office searched.

Meanwhile, a team of more than 30 FBI agents was mobilized at the Hyatt with search warrants for several other Capitol offices. Shortly before 10 p.m., they descended on the Capitol and began their all-night raid.

In Watson's office, investigators found documents that suggested she and Nolan were engaged in influence-peddling activities other than on the shrimp bill. "Smoking guns," Wedick called them, and they turned out to be the only documents from the search that were used in any of the five trials.

Because the original search warrant pertained only to documents associated with the shrimp bill, Wedick had to propose another search warrant at about 2 a.m., and awaken a federal magistrate for approval.

The search did not end until about 5 a.m., and the next day, news of the Capitol sting was splashed across newspapers and television screens.

After the investigation became public, federal prosecutors hoped that it would prompt lobbyists to come forward with other incidents of alleged bribery involving targeted lawmakers. But those hopes were dashed.

"It was very frustrating pulling together the non-sting aspects of the case," Levi said. "The lobbying community was very hard. They did not want to cut their own throats or hurt their friends . . . . Even when they were prepared to testify, they were anxious to make it appear that they were not cooperating, that they were under subpoena and were not helping the government."

As it turned out, the investigation would focus three years later on one of the most prominent lobbyists in the Capitol--Clayton Jackson. The towering, cigar-chomping Jackson was implicated largely by Robbins, who agreed in 1991 to wear a hidden tape recorder to gather evidence of a $250,000 bribe offer regarding workers' compensation insurance legislation.

In 1993, prosecutors confronted Jackson with the tapes that Robbins had made, and tried to get him to cooperate with them in their expanding probe. But Jackson, who had hired the same defense lawyer who represented Shahabian, refused to enter into a plea agreement, and he went to trial.

"We tried real hard to twist Clay Jackson, to get him to cooperate," said O'Connell, who is now in private practice. "And there were no limitations on the level of cooperation."

Jackson eventually was convicted of racketeering, among other crimes, and is serving a 6 1/2-year prison sentence.

Wedick also said the investigation was thwarted by the destruction of records at the Capitol by Nolan and Robbins.

"Alan (Robbins) had his secretary destroy records: He knew it and I knew it," Wedick said. "He also had his secretary alter records."

Although Robbins was immediately implicated by Shahabian on the shrimp bill, it was his other activities that led to his downfall--seeking bribes on other legislation and his outside business dealings. When investigators intensified their investigation of him, he started to panic.

Prosecutor Vincent said that even though the 1990 search of Robbins' Encino home turned up no valuable evidence, it was "the major impetus for Robbins to start negotiating a (plea bargain)."

Today, the key players in the sting operation say that the string of successful cases has changed some behavior at the Capitol, and that lawmakers are less likely to link campaign contributions with their official actions--at least overtly. But they believe that money will continue to play a role in the legislative process.

"I have the impression that people are more careful, more aware," said O'Connell. "I'm not sure there isn't some winking and nodding going on. But there's less criminal corruption now."

"I think the undercover project made some legislative and interest groups more sensitive to the fact that campaign contributions shouldn't be dangled as a reward or withheld as a threat," Levi said. "One undercover project doesn't eradicate a type of crime, but it acts as a deterrent."

Said Wedick, "We definitely corralled some of the biggest players down there, but I don't think we got them all."

Bee staff writer Denny Walsh also contributed to this report.

The Fresno Bee
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THE VALLEY IN REVIEW 1998
Big Names Surface in Operation Rezone Case
The Year Ahead Will Be Filled with
Lots of Court Time for the Feds
and the Defendants, Including a Former Assemblyman
Jerry Bier, The Fresno Bee

The headline was dramatic: "Bonadelle, Lung, Logan indicted in Rezone probe."

The federal government's public corruption investigation, dubbed Operation Rezone, had in early 1998 swept up one of the most powerful behind-the-scenes political figures in Fresno history, along with a former Fresno City Council member and one of the most successful developer-lobbyists in the city.

They were only three names in a growing list of local politicians and development industry officials indicted in the investigation, but they were big names.

Fresno developer John Bonadelle, former council member Bob Lung, and lobbyist Jim Logan had been dominant figures on the local political scene.

Their criminal indictment highlighted 1998, even though another followed, this time naming former Fresno City Council Member Brian Setencich, who also went on to serve a brief term as state Assembly speaker.

Bonadelle and Logan have denied the charges and face an April trial date. Lung pleaded guilty and is cooperating with government investigators. Setencich has called the charges against him "ludicrous" and said he, too, will go to trial.

Now, with Operation Rezone nearing the end of its fifth year, some observers question whether FBI and Internal Revenue Service agents and federal prosecutors will continue

to pursue the investigation with the same resolve as when it began in early 1994.

Was the Bonadelle case the culmination of the investigation?

Was Bonadelle, whose influence has been felt in local politics and development for nearly 40 years, the target that most satisfied investigators?

Federal authorities insist the Rezone investigations are not over.

"There are still leads and allegations, and investigations are continuing," said U.S. Attorney Paul L. Seave.

James Maddock, FBI special agent in charge in the Eastern District of California, agreed: "Public corruption is our No. 1 priority in the Eastern District, and that's certainly true for Rezone. As long as we have indications that there is corruption, we are going to pursue it and dedicate the resources to it."

Neither Seave nor Maddock would discuss specific cases or comment on the details of ongoing investigations; however, both men are known for targeting white-collar criminal corruption cases.

While there has been no official pronouncement, it has been reported that federal agents raided the office of developer R. J. Hill and the home of developer Bud Long in Fresno, as well as subpoenaed payroll records of former Fresno City Manager Michael Bierman.

"I can't really give you any specifics except to tell you we do have a number of anti-corruption initiatives and investigations underway and I think if those reach the prosecutive stage, people will see our commitment to that," Maddock said.

Thus far, the Fresno investigation, with 11 convictions, still trails the federal government's nine-year Capitol corruption cases in the late 1980s and early 1990s that resulted in convictions of 14 lawmakers, legislative aides, lobbyists, and other public figures.

Both Operation Rezone and the Capitol cases were led by FBI special agent James Wedick Jr., an investigator who has been honored nationally for his work on white-collar crime investigations.

Assistant U.S. Attorney John K. Vincent, the lead prosecutor in Operation Rezone, also was involved in the Capitol corruption prosecutions, as was Howard Moline, an Internal Revenue Service special agent who continues to work on Operation Rezone.

1998 also produced the longest sentence thus far in Operation rezone. Former Fresno City Council Member Robert C. Smith was given an eight-year term following his jury conviction on extortion, racketeering, and other charges.

Smith went to trial after backing out of a plea agreement in which prosecutors were recommending that he spend no more than a year in a halfway house in return for his cooperation in Operation Rezone.

Appendix G-1

Los Angeles Times

Thursday, December 8, 1994
South Bay; PART-J; Zones Desk

Kuykendall Blends Pragmatism, Ideology: Legislator Says Accepting Tobacco Firm's $125,000 Contribution Helped Him Beat Incumbent, and Vows It Won't Ease His Opposition to Smoking

TED JOHNSON
TIMES STAFF WRITER

If the state Assembly takes up campaign finance reform again, Assemblyman Steven T. Kuykendall (R-Rancho Palos Verdes) admits that he might be singled out.

"I may have taken what is the largest single contribution to an individual Assembly candidate, except for maybe Willie Brown," said Kuykendall, who was sworn in Monday as the assemblyman in the 54th District, which includes the Palos Verdes Peninsula, San Pedro and Long Beach. Campaign reform would limit the size of contributions to state Assembly and Senate campaigns.

In the waning days of the campaign, Kuykendall accepted a $125,000 check from tobacco giant Philip Morris even though he is on record as supporting anti-smoking legislation.

It might look like a contradiction. But this is how the political system works, Kuykendall says, a sentiment echoed by former colleagues on the Rancho Palos Verdes City Council and even a few of his former opponents.

A more polished politician might be coy about it, but Kuykendall freely admits that accepting the money was a pragmatic move that may have helped him defeat incumbent Betty Karnette by 597 votes.

Now, Kuykendall, an ex-Marine and mortgage banker, is facing threats of a recall launched by Sacramento Democrats. The state party has already filed a complaint over the contribution with the state Fair Political Practices Commission.

But so far, there's been little protest beyond Sacramento Democrats. Kuykendall and his supporters dismiss the complaint as frivolous and doubt that a recall will go anywhere

"It's something that he's always going to have to deal with. But I'd rather accept the check and be the winner with controversy than be the loser," said Republican consultant Tom Shortridge, president of Bear Republic Political Services in Redondo Beach.

Even anti-smoking groups say they are confident Kuykendall won't be beholden to the tobacco company.

"I expect we are going to be working with him," said Paul Knepprath spokesman for the American Lung Assn. in Sacramento.

This is not the first time that pragmatism and ideology have clashed for Kuykendall. Elected to the Rancho Palos Verdes City Council as a "read-my-lips, no-new-taxes" conservative, he soon found himself justifying tax increases as a way to resolve the city's fiscal crisis.

He voted for a utility tax, which the council passed last year, and supported a parcel tax, which narrowly lost when it was put on the ballot in 1992. With the city in need of new revenue, Kuykendall even suggested a referendum to ask residents if they wanted to hand control of the city over to the county.

"It's not a question of ideology, but whether a locally controlled city government can survive or not," he said at the time. "It's that simple."

The Draconian proposal went nowhere, but did get people talking.

"As a businessman, he had a way of saying 'Look at this problem or we'll be in bankruptcy,'" former Councilwoman Jacki Bacharach said.

Affable and frank, Kuykendall seldom displays a hard-nosed attitude people have come to expect from former Marines. He served two tours of duty in Vietnam, including a 1972 stint in which he was among the troops stopping the North Vietnamese Easter offensive. (One of his three children, daughter Kerry, followed him into the military as an ensign in the U.S. Navy. She is training to be a fighter pilot.)

After he retired from the military, Kuykendall worked at several banks and then helped start Lockheed Mortgage Corp., a subsidiary of Lockheed Corp. He is now a principal in the David Buxton Financial Corp. in Torrance and works as a real estate consultant and lobbyist, including work for the Palos Verdes Medical Center and Peninsula Medical Plaza.

But in recent years, his business affairs have taken a back seat to politics. In fact, during the primary, opponent Jeffrey Earle tried to cast him as a career politician. Kuykendall made an unsuccessful run for the school board in 1987 and then the City Council in 1989 before he won a council seat in 1991. And about a year and a half after his council election, he was in the race for the state Assembly.

"Some people said he was running too soon," said former Rancho Palos Verdes Councilman Bob Ryan. "But Steve's been (active) in representative politics since he was knee-high." Although opponents have tried to use his change of view on taxes and his political aspirations against him, their attacks haven't seemed to work. One reason, colleagues on the council say, is that he has been more of a peacekeeper than a combatant during council meetings.

"He didn't bring too much of his personal agenda to the table,"Bacharach said. "In fairness to Steve, I thought it was really good of him to (switch on taxes). I thought it was wrong of him to run on a platform of no new taxes. But he became a problem solver."

Even Earle, Kuykendall's primary opponent, backed him in the general election. Kuykendall sent a last-minute mailer during the primary, noting that Earle lived with his mother and suggesting that he didn't have enough experience to succeed in Sacramento. Earle explained that he moved in to help his mother when she had heart surgery.

"I wasn't really thrilled by (the mailers)," Earle said. "But these were the typical last-minute hit pieces that come out in a campaign. I didn't harbor any longstanding resentment for the stuff that came out."

And Kuykendall's supporters say that voters have little if any resentment over the Philip Morris contribution. Kuykendall notes that the tobacco giant has a number of subsidiaries, including real estate and food products.

"That company has got a lot more at stake than whether or not they sell cigarettes," Kuykendall said.

And ironically, it could be the Philip Morris contribution that ensures that he backs anti-smoking legislation while in Sacramento. Otherwise, opponents could gain even more fodder for a recall.

"He's not going to be dumb enough to vote tobacco," said Shortridge, the Republican consultant. "I don't think he owes them anything."

Steven Kuykendall says donation might look like a contradiction but it's how politics works.

Los Angeles Times

Tuesday, October 29, 1996
Metro Desk

In Legislative Races, Tobacco Is a Hotter Issue Than Ever: Several Candidates Get Burned by Foes for Taking the Industry's Donations. Some Who Accepted Gifts in the Past Are Now Shunning Them

DAN MORAIN
STAFF WRITER

SACRAMENTO -- Tobacco is being used as an issue in California legislative campaigns like never before, with several candidates pummeling their foes for taking tobacco money and casting pro-tobacco votes.

Some politicians who took tobacco donations in the past are on the defensive, and some are shunning such contributions now. "What do you call a nurse who takes money from the tobacco companies?" one mailer asks. Open up the brochure, and there's a drawing of Joe Camel in a nurse's uniform. "Tricia Hunter. The Tobacco Nurse."

Democrat Howard Wayne is sending this attack as part of his campaign against Republican Hunter for a San Diego-area Assembly seat. When she was in the Assembly in the 1980s and early 1990s, Hunter took roughly $6,500 from tobacco concerns.

That sum is paltry by California standards. But as she tries to reclaim a seat in the lower house, Hunter says, she won't be taking a dime more.

"Absolutely not worth the hit," she says.

Tobacco long has been an issue in California, the first state to approve a tobacco tax for anti-cigarette advertising. That was in 1988. California also led the nation in imposing

smoking bans, and overwhelmingly rejected a tobacco industry-sponsored initiative in 1994.

But candidates for California state office, and some for congressional seats, are using the issue with greater frequency in this campaign.

Pollsters, consultants and politicians cite several reasons: President Clinton has placed tobacco at the fore nationally, calling for increased regulation. At the same time, more state and local governments have sued tobacco firms to recoup the cost of treating tobacco-related illness.

Experts say that a candidate's acceptance of tobacco money, or an elected official's votes for tobacco bills, probably won't be enough to sway an election. But when tobacco is raised as part of a cluster of issues, voters may begin to question a politician's independence.

Indeed, some candidates are telling voters that they accept no money from tobacco, the gun lobby or the oil industry.

"It creates a general atmosphere that you're beholden to special interests," said state Senate President Pro Tem Bill Lockyer, who is overseeing Democratic campaigns for the upper house.

So far, tobacco is a significant issue in four of the hottest five races for the state Senate. For the most part, Democrats are using the issue against Republicans. But some Republicans are assailing Democrats who take tobacco money

In a coastal Senate race, Assemblyman Bruce McPherson (R-Santa Cruz) is preparing to send mailers citing tobacco donations accepted by his opponent, former Assemblyman Rusty Areias of Los Banos.

"It is part of a whole package," said McPherson, citing his refusal to take oil industry money.

All this is not to say that tobacco firms aren't major players in the election. Philip Morris, the world's largest cigarette firm, poured more than $300,000 into California campaigns in the first half of the year.

The New York conglomerate has given $217,000 to legislative leaders, including $55,000 each to Lockyer and Senate Republican Leader Rob Hurtt of Garden Grove.

"Every campaign is under-funded," Lockyer said, explaining why he takes tobacco money. "I recognize that it sets me up for some future political hit. But it's my job as the financier of the campaigns, as the Democratic leader of the Senate, to try to maximize the amount of resources in campaigns."

As legislative leaders go, Lockyer takes relatively small sums of tobacco money. Republican Speaker Curt Pringle of Garden Grove, by contrast, has accepted more than $102,000 from the tobacco industry this year.

Assembly Democratic Leader Richard Katz of Sylmar has not taken tobacco money on behalf of Democrats running for the lower house. However, other Assembly Democrats have taken tobacco money, including at least one potential successor to Katz, Assemblyman Cruz Bustamante of Fresno.

Even more cigarette money undoubtedly will flow into state races during the final week of the campaign, if 1994 is any indication

On the day before the 1994 election, Philip Morris shipped $125,000 to one Assembly candidate, Republican Steve Kuykendall of Rancho Palos Verdes, giving Kuykendall the money he needed to pay for political mailers against his incumbent opponent. Kuykendall won the Assembly seat.

This year, Kuykendall's foe, Democrat Gerrie Schipske, is running a campaign built almost exclusively around the $125,000 donation Kuykendall took two years ago. Among her

campaign props, Schipske hands out pill bottles, filled with "Tobacco Cash Withdrawal Pills." The pills are jellybeans.

"WARNING," the pill bottle label says. "Taking $125,000 from Philip Morris during 1994 campaign without telling voters will result in loss of your Assembly seat in 1996."

"Why don't you campaign on something the public is interested in?" Kuykendall says to his foe. He points to what he sees as the main issues in the Long Beach-area district: jobs, crime and education, not tobacco.

"It has caused a lot of heartburn, I must say that," Kuykendall said of the donation. He added that he has no plans to take more tobacco money this year. "There is no need to go back. Just the aggravation it causes, why put up with it?"

Among the other races in which the tobacco issue is a factor;

In the campaign for a state Senate seat in the Long Beach area, Democrat Betty Karnett, who was unseated by Kuykendall in 1994, is devoting much of her mail campaign to tobacco donations accepted by her opponent, Assemblyman Phil Hawkins (R-Bellflower), and pro-tobacco votes Hawkins has made.

Democrat Adam Schiff, running for a Pasadena-area Senate seat, cites tobacco company money accepted by his opponent, Republican Assemblywoman Paula Boland of Granada Hills. Boland responded by accusing Schiff of hypocrisy because he has taken money from Democratic leaders who have taken tobacco money.

The tone is getting personal in the hard-fought Senate campaign between Assemblyman Richard Rainey (R-Walnut Creek) and Democrat Jeff Smith, a physician and Contra Costa County supervisor.

"The only way he is going to be able to win is to tear down my reputation," Rainey said in an interview.

Smith opened with a volley of mailers, including one signed by a lung cancer patient Smith had treated, citing Rainey's acceptance of $3,750 in tobacco money, and votes against anti-tobacco bills.

Rainey responded with a letter signed by his daughter, Gina, pointing out that her mother, Rainey's first wife, died of breast cancer in 1986. Accusing Smith of an especially low blow, the letter declared, "No election is worth winning if it means sacrificing common decency."

Given the anti-tobacco messages in several campaigns, the Legislature that returns to Sacramento could be willing to take steps to further limit cigarettes, some observers say. At a minimum, lawmakers who have made an issue of tobacco will find it hard to vote for pro-tobacco legislation.

"It's a clear message to tobacco companies: I'm not one of their votes in Sacramento," McPherson said. "If they want a vote, go someplace else."

Los Angeles Times

Friday, July 3, 1998
Metro Desk

Casino Campaign Donations Questioned: Legislature's Legal Advisor Says Lawmakers Could Face Criminal Sanctions if They Accept Contributions from Indian Gambling Operations Deemed To Be Illegal

DAN MORAIN; DAVE LESHER
TIMES STAFF WRITERS

SACRAMENTO -- Fueling an already heated debate over gambling, the Legislature's legal advisor has issued an opinion warning that lawmakers could face federal criminal sanctions if they accept campaign donations from Indian gambling operations deemed to be illegal.

The opinion, obtained Thursday, comes as Native Americans battling to operate casinos on reservations emerge as a major political force in the capital. Among the largest campaign donors in California, they have given Democrats and Republicans more than $1 million so far this year.

Opponents of the expansion of gambling on reservations immediately seized on the opinion, saying lawmakers who support the tribes' position should immediately refrain from taking any additional money from them.

"I wouldn't take it," Senator Quentin Kopp, a San Francisco independent, said, adding that he intends to introduce legislation next week to prohibit contributions from such sources. "I'd advise anyone not to accept such contributions in the future."

Several state legislators and candidates for the Senate and Assembly have taken five-figure donations from various tribes. But the implications of the opinion by the legislative counsel extend to the races for governor, attorney general, and other

statewide offices; in those campaigns, some candidates have accepted hundreds of thousands of dollars.

"Nothing but a legal opinion," said Senator Richard Polanco (D-Los Angeles), one of the main proponents of the tribes' position and a large recipient of their donations. "[The casinos] are functioning today. If they were out of compliance, they would be shut down. They have not been shut down. The courts have not ruled."

The legislative counsel's opinion acknowledges that many aspects of the issue are not settled.

Federal prosecutors across the state have filed civil suits seeking to shut down the gambling operations. However, courts have not held conclusively that the operations violate state and federal law.

Still, the opinion raises the possibility that lawmakers who take money from illegal gambling operations could be forced to return the money, whether or not they know the operations are illegal. If they know that the operations violate the law, candidates who take donations could face prison time, the opinion stated.

Citing federal laws against money laundering and racketeering, the opinion says that "money that is generated at an Indian casino from gambling activities that are illegal under state or federal law is potentially subject to seizure by federal authorities."

The opinion also says that "any person who knows that the underlying activity is illegal and nonetheless participates in a financial transaction involving that money in excess of $10,000 may also violate [federal criminal law], and consequently be punished by up to 10 years in prison."

Legislative counsel opinions generally do not become public. They are intended to be confidential, between

lawmakers and their in-house attorneys. This document was leaked anonymously to the Times and other publications.

Underscoring the intense lobbying and the high stakes involved in the fight over gambling, the opinion was dated June 26, indicating that it was circulated among legislators as they prepared to vote on legislation to ratify a gambling compact negotiated by Governor Pete Wilson and the Pala Indians, a pact that was denounced by several other tribes that want greater rights over the future of their gambling enterprises.

The major gambling tribes won an initial victory this week when the pact was voted down in an Assembly committee, although the issue is expected to be voted on again this summer.

Nevada gambling interests are among the main opponents of the California gambling tribes, mounting a major lobbying effort in Sacramento. Nevada casinos want to limit the expansion of gambling in California to protect a major part of their customer base: gamblers from this state.

In the gubernatorial campaign, Lieutenant Governor Gray Davis, the Democratic nominee, has accepted more than $125,000 from Indian gambling interests, while Republican Attorney General Dan Lungren, the Republican nominee, is not accepting the money.

Garry South, Davis' campaign manager, said: "Let's not lose sight of one fact here--this alleged illegal gambling activity is only that because Pete Wilson has refused to negotiate and bargain in good fa'.'h with the Indians. This is playing with semantics and tricky definitions here."

Lungren's campaign issued no comment on the opinion.

In the race for state Attorney General, Dave Stirling, the Republican nominee and Lungren's chief deputy, took $300,000 from Indian gambling interests during the primary.

The Democratic nominee, Senator Bill Lockyer, has taken only minimal sums in the past, and did not accept any such contributions during the primary.

Lockyer said the opinion raises "sufficient questions about the priority of relying on this funding source to cause concern."

However, Stirling's campaign manager, Sal Russo, dismissed the opinion: "This is all about the Nevada casinos protecting their economic stake in gambling, to the detriment of Native Americans in California."

In a related development Thursday, a memo by attorney Joseph Remcho, an expert in initiative law, was leaked. It said that an initiative pushed by several tribes to allow them greater rights over gambling is probably illegal.

The memo, obtained from one of the competing factions involved in the gambling fight, says the initiative is improper because it seeks to authorize gambling activities prohibited by the state constitution. The attorney said such a change would require a constitutional amendment, not an initiative.

"To the extent that the Constitution prohibits a type of gaming, the state cannot authorize such gaming by statute or compact alone, but only by amending the Constitution," the memo says. "The initiative does not include a constitutional amendment. Thus, any gaming [activities] authorized by the initiative . . . are subject to these constitutional restrictions."

George Forman, an attorney representing several of the tribes, dismissed Remcho's opinion: "He's wrong . . . . He's real good in some stuff, but not so good in others."

Times staff writer Max Vanzi contributed to this report.

Los Angeles Times

Wednesday, October 21, 1998
Metro Desk

Labor, Trial Lawyers Pour Millions Into Davis' Coffers

Funds: A Third of Gubernatorial Candidate's Money Comes from Two Groups That Usually Back Democrats

VIRGINIA ELLIS
TIMES STAFF WRITER

POLITICAL CURRENCY. The Candidates and Their Finances. One in an occasional series

SACRAMENTO -- In August, Democratic gubernatorial hopeful Gray Davis sat before health care providers and assured them that his biggest campaign dollars had not come from unions and trial lawyers.

"If you want to talk cold turkey about who was there when you needed them, they were not there," Davis told a dozen potential contributors from a coalition that often locks horns with organized labor and malpractice lawyers. "Unions were preoccupied . . . and a lot of trial lawyers thought I couldn't make it--too dull, too boring."

It would have been shocking enough that unions and trial lawyers, two of the deepest pockets for Democratic candidates, had shunned the party's front-runner during the primary, just when he needed them most.

But records show that these two groups had contributed prodigiously to Davis, pouring millions of dollars into his primary and general election campaign. By Sept. 30, they had pumped more than $7 million into his candidacy, providing more than a third of his campaign financing.

In the meeting with health care leaders, Davis, who has long enjoyed the largess of organized labor and trial lawyers, was seeking to allay fears that the two interest groups would

wield inordinate influence if he were elected governor. His campaign manager would later say he really meant that neither group had contributed substantially in the early days of the primary campaign, when his candidacy was on the ropes.

Even so, the episode provides a rare glimpse into the private fund-raising efforts of a candidate eagerly seeking to broaden his political and financial base and raise the millions needed to compete in the nation's most expensive gubernatorial election.

Davis and his rival, Republican state Atty. Gen. Dan Lungren, are expected to spend more than $45 million between them. Davis is leading in the financial competition, having raised $21 million to Lungren's $17 million. Besides labor and trial lawyers, the entertainment industry has opened its wallet to the tune of $2 million, financial services providers have donated nearly $1.5 million, real estate interests have given more than $1 million and Indian tribes involved in gaming have contributed more than $300,000.

But the backbone of Davis' campaign came as it has in past elections from traditional Democratic donors--organized labor and law firms that represent plaintiffs in civil actions.

The outpouring eclipsed anything labor and the trial lawyers had contributed to gubernatorial candidates in recent elections, outstripping donations they made to the campaigns of Kathleen Brown, the Democratic nominee in 1994, or Dianne Feinstein, the nominee in 1990.

Support Is Both Blessing, Curse

For Davis, the backing has been both a blessing and a curse. While providing a strong financial base, it also impeded his ability to raise money from groups that have vastly different agendas from unions or trial lawyers.

So Davis was careful to downplay their involvement in his campaign when he met Aug. 28 in San Francisco with a dozen

representatives of Californians Allied for Patient Protection, a coalition of health care providers that control thousands of dollars in campaign contributions.

In the past, the member groups had mostly given to candidates who shared their views on medical malpractice issues, which often are at odds with trial lawyers who represent victims of injuries, defective products and physician negligence.

To their surprise, Davis told the group that his position on malpractice issues was actually in sync with theirs--a comment that prompted one member to quickly ask how he could remain in their camp when he traditionally received strong financial support from trial lawyers and unions.

"Do I feel allegiance?" the candidate said in tape-recorded remarks that were later transcribed. "Yes, but not to the groups that the newspapers say I feel allegiance to, 'cause they were not there for me for a variety of reasons.'"

"Rich Republicans," he said, got him through the primary, a reference his campaign manager later said was to a handful of contributors such as A. Jerrold Perenchio, who is majority owner of the Spanish language network Univision.

California Medical Assn. Executive Vice President Jack Lewin, who attended the meeting, said the group found Davis' message reassuring.

"Before meeting with Mr. Davis, [the coalition] was clearly predisposed toward Lungren," Lewin said. "After that meeting, there was really openness toward both candidates."

The latest campaign reports show that the coalition's member groups have since given Davis more than $40,000.

Davis declined a request for an interview. But his campaign manager, Garry South, said the candidate was only lamenting the extent of labor and trial lawyer support during

the first three months of the year, when he was being outspent by his millionaire rivals in the primary race, Al Checchi and Jane Harman.

In that time frame, South said, most of the contributions and fund-raising efforts came from individuals, including some Republicans. And he said special interests such as labor and trial lawyers did not start giving large amounts until April, when Davis began moving up in the polls.

"A candidate remembers who was there when the going was tough a hell of a lot more than they do who was piling money on at the end when it looked like you were a sure winner," South said.

Davis' statement did not seem to dampen the support of labor leaders contacted by the Times.

"Frankly, I seriously doubt he had us in mind when he made those statements," said Perry Kenny, president of the California State Employees Assn., which has donated $355,000. "We have been with Gray since the beginning of the primary. We believe he will be an excellent governor."

Labor and trial lawyers see Davis' election as an opportunity to regain access to the governor's office, reverse the anti-union policies of Gov. Pete Wilson and ensure that a Democratic chief executive oversees the once-in-a-decade redrawing of legislative and congressional boundaries.

"This a pivotal election," said Frank Russo, president of the California Applicants Attorneys Assn., a coalition of lawyers who handle workers' compensation cases. "We've suffered under 16 long years of Republican governors. Our members are overwhelmingly supporting Gray Davis."

For labor, the election comes after a bruising eight years under Wilson, who was able to eliminate the requirement that workers be paid overtime for more than an eight-hour day, stall

labor's legislative agenda and force it to spend millions to defeat hostile initiatives.

Earlier this year Wilson backed and campaigned for Proposition 226, an initiative that would have required written permission from each worker before union dues could be used for political purposes. Labor spent nearly $24 million to defeat the proposal.

"In a sense, it's payback time for labor," said Charles Price, a political science professor at Cal State Chico. "Pete Wilson went out of his way to throw a monkey wrench in the labor movement."

Energized by their defeat of Proposition 226, labor groups representing teachers and office workers, police and firefighters, the building trades and government workers have pumped more than $5.5 million into Davis' campaign since January.

"What we're after is a cessation of the labor wars that Wilson has waged against us for eight years," said Jim Lewis of the State Building & Construction Trades Council of California. . . . "With Gray Davis, we know we won't have to play defense all the time both in the Legislature and in the court."

Nearly half of labor's contributions came from government employee groups who have battled Wilson over raises, raids on their pension funds and union contracts.

Agenda Blocked by Republican Governors

In the same period, records show, trial lawyers gave nearly $2 million to Davis' campaign, with big law firms--such as Robinson, Calcagnie and Robinson of Orange County; Greene, Broillet, Taylor, Wheeler and Panish of Santa Monica; and Girardi and Keese of Los Angeles--donating at least $100,000 each. San Diego trial attorney William Lerach contributed $120,000 as an individual.

Mark Robinson, incoming president of the Consumer Attorneys of California, insisted that there was no coordinated effort to support Davis. But he said that trial lawyers traditionally support Democrats and that Davis shares their views on environmental, consumer and education issues.

"I can just speak for myself," he said. "I've been very frustrated, and I feel we need new leadership."

The trial lawyers' legislative agenda, like labor's, has been blocked by Republican governors. Davis supports some of their positions but he opposes their proposed increase in the $250,000 limit on pain and suffering damages in medical malpractice cases.

That demonstrates, South said, that Davis' critics are wrong when they say trial lawyers and labor will have the inside track in his administration. He insisted that Davis only offers a sympathetic ear, not an automatic rubber stamp for what the two groups want.

"They know they aren't going to get everything they want out of Gray, but they feel a lot more comfortable with him than they do with Dan Lungren," South said.

The lieutenant governor already has expressed support for restoring the eight-hour workday, promised not to tinker with the prevailing wage, vowed to reach a contract agreement with state workers and made it clear he would not sponsor anti-union ballot initiatives.

Before the primary, Davis received $319,000 in political contributions from California Indian tribes that run casinos, then abruptly in July stopped accepting such donations. His moratorium followed the indictment of two officials of the Cabazon Band of Mission Indians. The tribe contributed more than $115,000 to Davis' campaign, but the charges against the officials--laundering illegal contributions--involved six other Democratic candidates.

Davis has openly courted Native American tribes, writing officials in April to assure them that he did not support the expansion of card rooms--an Indian gaming competitor.

South said Davis distanced himself from Indian interests not only because of the indictments but also because of a host of unresolved gambling issues.

Before the moratorium, the Twenty-Nine Palms Band of Mission Indians donated $101,100 to Davis. Gene Gambale, general council for the group, said Davis' moratorium has not reduced tribal support because he is still viewed as more willing than Wilson to "have direct discussions" with the tribes about gambling issues.

South said that, although Davis opposes the expansion of gambling in California, "he is not for rolling the clock back and going onto the reservations and raiding them and shutting down their gambling operations."

One of Davis' other major blocs of contributors is the entertainment industry, including large contributions from Hollywood figures such as producer Jeffrey Katzenberg and Haim Saban, producer of the Mighty Morphin Power Rangers.

South said most of their support is philosophical. "Once you get past Charlton Heston and Tom Selleck," he said, "the number of Republicans in Hollywood is sparse."